SUPREME COURT, U. S.

No. 478

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In the Supreme Court of the United States

OCTOBER TERM, 1968

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,

Plaintiffs-Appellants,

and

MILTON M. COHEN,

Intervening Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

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On Appeal from the United States District Court
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JURISDICTIONAL STATEMENT

Plaintiffs-appellants Jeremiah Stamler, M.D. and Yolanda F. Hall appeal from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered June 26, 1968.

Opinions Below

The opinions of the District Court, majority and dissenting, not yet reported, are attached as Appendix 1, and a copy of the judgment from which this appeal is taken is attached as Appendix 2.

Jurisdiction

This appeal involves two actions which were consolidated by order of the District Court. The first case was filed on May 24, 1965, the day before appellants were to appear pursuant to subpoenaes before a sub-committee of the United States House of Representatives Committee on Un-American Activities (the "Committee") in Chicago, Illinois. The second case was filed in December, 1965, after the Committee's hearings in Chicago were concluded. Both cases were brought by plaintiffs-appellants in the United States District Court for the Northern District of Illinois, Eastern Division, under 28 U.S.C. §§ 1331, 1343(3) and (4), 2201, 2202, 2282, 2284; 42 U.S.C. §1983; and under the Constitution of the United States (Article I, Section 9, Clause 3; Article III; and the First, Fifth, Ninth, Tenth and Fourteenth Amendments).

The original defendants in both cases were the Chairman and the members of the Committee ("the Congressional appellees" or "the Committee members"). The Attorney General of the United States and the United States Attorney for the Northern District of Illinois ("the prosecutors") were subsequently added as parties defendant.

Insofar as pertinent to this appeal, appellants sought (1) a declaratory judgment that the Act of Congress which established the Committee (Rule XI, 18(b), Legislative Reorganization Act of 1946, 60 Stat. 812, 828) is repugnant to the United States Constitution, (2) an injunction prohibiting the Congressional appellees from acting under or

enforcing that Act, and (3) an injunction prohibiting the prosecutors from proceeding with prosecution of indictments obtained by them against appellants for alleged contempt of Congress arising out of the 1965 Chicago hearings.

With one Judge dissenting, the District Court entered on June 26, 1968 its judgment dismissing the consolidated cases as to all appellees. Notice of appeal was filed by appellants on July 5, 1968. By order entered August 30, 1968, the time to docket this appeal was extended to September 5, 1968.

Jurisdiction of this Court to hear this appeal is conferred by 28 U.S.C. §1253. The following cases sustain the jurisdiction of this Court: *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947); *United States* v. *Georgia Public Service Commission,* 371 U.S. 285 (1963).

Constitutional Provisions and Statutes Involved

Article I, Section 6, Clause 1 of the United States Constitution provides in part:

> "... and for any Speech or Debate in either House, they shall not be questioned in any other Place."

Article I, Section 9, Clause 3 of the United States Constitution provides in part:

> "No Bill of Attainder . . . shall be passed."

The enabling Act of the United States House of Representatives Committee on Un-American Activities is a part of the Legislative Reorganization Act of 1946. (60 Stat. 812, 828.) Rule XI, 18(b) of the Act provides as follows:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character and objects of Un-American propaganda activities in the United States, (ii) the diffusion within the United

States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Questions Presented

1. Whether a complaint seeking declaratory and injunctive relief against an unconstitutional act of Congress may be dismissed as against the United States Attorney and the Attorney General merely because Congressional-defendants have asserted a claim of immunity under the Speech or Debate Clause and where concededly the prosecutor-defendants have no such claim of immunity and are otherwise proper parties to the action?

2. Whether the Speech or Debate Clause prohibits civil actions against members of Congress to adjudicate the constitutionality of federal legislation?

3. Even if the Speech or Debate Clause is applicable to the relief sought in this proceeding, whether summary judgment may be granted against appellants when a clear issue of fact exists as to whether the activities of the Congressional appellees were legitimate legislative activities?

4. Whether the failure of the Congressional defendants to assert the Speech or Debate Clause as a bar to this action until April, 1968 has resulted in a waiver of any rights or privileges afforded them by that Clause?

5. Even if the Speech or Debate Clause is applicable to the relief sought in this proceeding, whether summary judgment may be granted against the appellants without affording them an opportunity to contest factually the asumption that the Congressional appellees were engaged in legitimate legislative activity?

6. Whether the statutory mandate establishing the Committee on Un-American Activities of the House of Representatives is on its face repugnant to the Constitution of the United States?

STATEMENT OF THE PROCEEDINGS BELOW*

Plaintiffs Jeremiah Stamler, M.D. and Yolanda F. Hall and intervening plaintiff Milton M. Cohen (hereinafter ("appellants")** were subpoenaed to appear before a subcommittee of the United States House of Representatives Committee on Un-American Activities (hereinafter "the Committee") to be held in Chicago, Illinois commencing May 25, 1965. A letter accompanying each subpoena stated that the Committee had received evidence in executive session in which the person subpoenaed was identified as having been a member of the Communist Party. (2 A. 53-54.) Appellants received no information regarding the purpose or subject matter of the hearings.

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* "1 A ——" refers to the Appendix filed in the Court of Appeals for the Seventh Circuit in No. 15268-9; "2 A. ——" refers to the Appendix filed in Nos. 15268-9 and 15668-9 (Consolidated); "Ex. 50, p. ——" and "Ex. 51, p. ——" refer to the printed Supplemental Appendices filed in the consolidated appeals; "— R. ....." refers to the volume and item number of the five volume Record on Appeal filed in this Court.

** Appellant Stamler has long enjoyed a world-wide reputation for his professional research and writings on prevention of heart disease. He is Director of the Chicago Board of Health Division of Adult Health and Aging and Heart Disease Control Program. He was placed upon inactive status the day after he was indicted for contempt of Congress in July 1967. Since 1958 Dr. Stamler has been on the faculty of the Department of Medicine, Northwestern University Medical School, Chicago, and currently nolds the rank of Associate Professor. He is Secretary of the Council on Epidemiology and Prevention of the International Society of Cardiology, and Western Hemisphere Editor of the Journal of Atherosclerosis Research. (1 A. 2-3; 2 A. 3-4.)

Appellant Hall is a Research Nutritionist for the Chicago Health Research Foundation, of which Dr. Stamler is the Executive Director. (1 A. 3; 2 A. 4.)

Intervening appellant Cohen is Executive Director of a home for the aged, a not-for-profit corporation operated in conjunction with the Jewish Federation of Metropolitan Chicago. (2 A. 87.)

Appellants' First Action

On May 24, 1965, the day before the Committee hearings were to commence, appellants instituted an action against the Chairman and members of the Committee in the District Court in Chicago in which they sought (i) a declaratory judgment that the Act of Congress (Rule XI) that established the Committee is repugnant to the United States Constitution, (ii) an injunction restraining enforcement of that Act and (iii) an injunction restraining the holding of the scheduled hearings in Chicago. (1 A. 2-14, 38-39; 1 R. 2, pp. 5-55.)

The same day, after oral arguments were heard, the District Judge (Honorable Julius J. Hoffman) dismissed the action pursuant to the Committee's oral motion on the ground that the complaints raised no substantial question of federal law, relying primarily on *Barenblatt* v. *United States,* 360 U.S. 109 (1959). Appellants thereupon appealed to the Court of Appeals for the Seventh Circuit. (1 A. 41-52).

The Hearings

Pursuant to the subpoenas served upon them, appellants and their counsel attended the hearings on May 25, 26 and 27, 1965. The first two witnesses were the Committee's own witnesses ("friendly" witnesses). They testified at length concerning alleged activities of the Communist Party in the Chicago area, particularly among steel mill workers during the 1930's through the 1950's. The Committee had already heard this testimony in executive session.* Neither of the Commttee's witnesses mentioned either Dr. Stamler or Mrs. Hall. The Committee then called the subpoenaed witnesses, reserving Dr. Stamler and Mrs.

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* Both witnesses were undercover FBI agents who infiltrated the Communist Party. Both left the Party in 1963. One had testified before the Subversive Activities Control Board in 1963. (Ex. 50, pp. 301-307; 333, 388.)

Hall until last. All of the subpoenaed witnesses other than appellants refused to answer any except a few preliminary questions. They based their refusals upon multiple grounds including, in every instance, the Fifth Amendment privilege against self incrimination. Nevertheless, Committee counsel put to each of these witnesses a long series of defamatory, leading, "fact"-laden questions. In many instances, over objection of appellants' counsel, Committee counsel asserted as a part of his questions that the Committee had information, which it deemed "reliable," that Dr. Stamler and Mrs. Hall had been members of the Communist Party and had engaged in "subversive" activities.*

The Committee denied or disregarded the objections and protests of appellants' counsel that this deliberately pursued practice impaired the rights of the appellants and the witnesses under the Constitution of the United States, was a gross abuse of the legislative process, was a delib-

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* For example:

"Now, further, in light of the fact that Mrs. Yolanda Hall in the year 1949 was here in Chicago as an admitted Communist—." [Interrupted by objections and colloquy.] (Ex. 50, p. 432.)

"The committee also possesses information, which it believes reliable, that you and Dr. Jeremiah Stamler also were in attendance at a conference held on October 16-17, 1953, titled 'The Chicago Area Conference for World Peace Through Negotiations,' which was held under the auspices of the American Peace Crusade at the Fine Arts Building, Curtis Hall, 410 South Michigan Avenue, Chicago, Illinois. Did you meet or talk with Dr. Stamler on these occasions?" (Ex. 50, p. 508.)

"The committee is informed that, at the time [late 1950] you were contacted by Dr. Stamler you were advised by him that you were one of several persons chosen to give up their identity and to move to new areas to carry on in case Communist Party leaders were put away. Did he tell you that?" (Ex. 50, pp. 534-535.)

See also Ex. 50, pp. 430, 432, 507-8, 511, 524-5, 534.

erate pillorying of appellants and the witnesses, was unsworn accusatory "testimony" of Committee counsel, was gross hearsay, and was for the sole purpose of holding the witnesses and appellants up to public ridicule and defamation.

The Committee also denied the repeated requests of appellants' counsel that all testimony of or concerning appellants be taken in executive session, pursuant to Rule 26(m) of the rules of the House of Representatives.* The hearing room was at all times jammed with spectators, television cameras and operators, news-cameramen, news reporters, and a squadron of marshals.

Mrs. Hall was called to testify on the last day of the hearings. She had not been mentioned in the testimony of any witness. Immediately after being sworn and giving her name, her counsel made a statement to the Committee setting forth the various violations of the United States Constitution and Committee rules which impelled him to advise Dr. Stamler and Mrs. Hall to leave the hearings without further ado. Upon advice of counsel, Mrs. Hall thereupon left the hearing room. (Ex. 50, pp. 537 to 547.)

The Committee then recalled one of its friendly witnesses who, though he testified he had never met Dr. Stamler, was

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*Committee Rule 26(m) provides:

"If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(1) receive such evidence or testimony in executive session;

"(2) afford such person an opportunity voluntarily to appear as a witness; and

"(3) receive and dispose of requests from such person to subpoena additional witnesses."

One of appellants' counsel (Thomas P. Sullivan) orally requested executive sessions and was forcibly seized and thrust down into a chair by marshals at the Chairman's direction. Another of appellants' counsel (Albert E. Jenner, Jr.) was threatened with bodily removal from the hearing room. (Ex. 50, pp. 430-2, 548.)

permitted (over objections) to testify to a derogatory hearsay statement about Dr. Stamler which the witness allegedly overheard in 1959. The Committee denied the request of Dr. Stamler's counsel to cross examine the Committee's witnesses. Dr. Stamler was then called as a witness. After being sworn, upon advice of counsel, he took the same position as had Mrs. Hall, and left the hearing room. (Ex. 50, pp. 549 to 552.)

Appellants' Second Action

Following the hearings, appellants commenced a second action in the District Court against the Committee, in which appellants set forth what had transpired at the hearings. The official printed transcript of the hearings was attached as an exhibit to the complaint. (2 A. 3-83.) In substance the complaint alleged that the misconduct on the part of the Committee, which appellants had anticipated, had in fact taken place; that the course pursued by the Committee at the Chicago hearing was in the pattern of all prior hearings over the years; that the Committee had consistently interpreted Rule XI to authorize that conduct; and that the Committee was engaged in public pillorying of witnesses rather than investigation for purposes of legislation. Appellants sought a declaratory judgment that the Act of Congress establishing the Committee is repugnant to the Constitution, both on its face and by reason of the unconstitutional meaning which has been attributed to it through its enforcement and use by the Committee over the years; an injunction restraining the Committee from enforcing or operating under that Act; a declaratory judgment that the hearings held on May 25-27, 1965 were invalid; and an injunction restraining the Committee from instituting criminal proceedings against appellants for contempt of Congress. (2 A. 3-102; 2 R. 4, pp. 5-127, 141-160.)

In April, 1966, District Judge Hoffman denied appellants' motion that a three-judge court be convened, and granted the Committee's motion to dismiss the second complaint, on the grounds (1) appellants have no standing to maintain the action, (2) the relief available to appellants will not terminate the controversy, (3) the action is barred by the doctrine of separation of powers, and (4) no justiciable case or controversy is presented. (2 A. 117-134.) No claim of immunity under the Speech or Debate Clause was either raised or decided. Appellants' appeal from this ruling was consolidated in the Court of Appeals with the first appeal.*

The Court of Appeals' Ruling

On November 10, 1966, a majority of the Court of Appeals reversed both of the orders of dismissal of the complaints, and remanded with directions that three-judge district courts be convened to hear and determine the cases. (Appendix 3; 3 R. 6.) The court held that the complaints set forth a basis for equitable relief and raised "a substantial constitutional question not foreclosed by the Supreme Court in *Barenblatt* v. *United States*, 360 U.S. 109 (1959)." The court contrasted this case with *Barenblatt*, saying, "Here it is alleged that Rule XI, section 18, is unconstitutional as continually interpreted by the Subcommittee to justify the effectual 'pillorying' of plaintiffs and other witnesses." In a footnote, the Court said (371 F.2d 413, 414):

> "Because of the allegations here of the Subcommittee conduct giving an unconstitutional meaning to the statute, this case is distinguished from those where unconstitutional conduct under color of a valid statute is

* Prior to the commencement of the second action, the Committee had moved to dismiss appellants' first appeal on the grounds of mootness, lack of subject matter jurisdiction, and lack of a justiciable controversy. The Court of Appeals denied this motion.

> alleged. *Ex parte Bransford,* 310 U.S. 354 (1940). It is well established that the meaning of a statute must not be derived solely from its abstract terms, 'unrelated to the definite content furnished them by the course of congressional actions.' *Barenblatt* v. *United States,* 360 U.S. 109, 117 (1959)."

The Committee's petition for rehearing *en banc* was denied on February 13, 1967 (two Judges dissenting).*

Issuance of the Court of Appeals' mandate was delayed for over three months on motions of the Committee's counsel while they considered whether to file a petition for writ of certiorari in this Court. No petition was filed, the mandate was issued in May, 1967, three-judge district courts were convened to hear both cases, and the cases were consolidated for trial. (3 R. 7-9.)

The Indictments

In October, 1966, while appellants' appeals were under advisement in the Court of Appeals (and 17 months after the Chicago hearings), a majority of the House of Representatives passed resolutions that the Speaker certify to the United States Attorney in Chicago reports of the Committee as to plaintiffs' refusal to testify before the

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* In the petition for rehearing (pp. 29-34), the Committee raised for the first time the contention that adoption of contempt resolutions by the House of Representatives (referred to below), which occurred while the appeals were under advisement, rendered the case moot. Again no argument was made that the Speech or Debate Clause barred appellants' action.

Committee, in alleged violation of 2 U.S.C. §192.*

On July 18, 1967 (8 months after the House passed the resolutions), appellants were indicted by the grand jury for the Northern District of Illinois under 2 U.S.C. §192. (67 CR 393, 394, 395.)**

Rulings of the Three-Judge Court in the Civil Case

Following return of the indictments, the three-judge court (Judge Hoffman dissenting) reversed the orders previously entered by Judge Hoffman and granted appellants' motions (i) to add the prosecutors as parties defendant, and (ii) to file a supplemental complaint setting forth the indictments and resulting harm which has befallen appellants and their families. In the supplemental

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* 3 R. 12; 112 Cong. Rec. 27495, 27506 (1966). Statements in opposition to the resolutions, signed by thousands of scientists, physicians, lawyers, clergymen and other professional people were presented to the House (112 Cong. Rec. 27462-84 (1966)), and opposition to the Committee on the House floor, both in speech and vote, reached an all time high.

In the vigorous and extended floor debate concerning these resolutions, it was revealed that the Committee had surreptitiously engaged in the practice of compensating its friendly witnesses following the giving of their testimony. (112 Cong. Rec. 27439-62, 27448-9, 27451, 27484-513, A. 5402-3 (1966).)

** The three criminal cases have been consolidated for trial and are pending before Hon. Abraham L. Marovitz. In Judge Marovitz's absence from the country, Hon. Richard B. Austin denied the motion of defendants (appellants in the case at bar) to stay proceedings in the criminal cases pending this appeal. A similar motion is under advisement before the three-judge Court at the time this brief is filed (Sept. 5, 1968).

Pre-trial motions have been filed in the criminal cases, and those motions are now being briefed. Judge Marovitz has set the motions for disposition on October 24, 1968, and the trial for November 12, 1968.

complaint, plaintiffs pray for a permanent injunction restraining prosecution of the indictments. (4 R. 50.)*

Appellees moved to dismiss the complaints as supplemented on multiple grounds, including lack of standing and justiciability, separation of powers, mootness, the ruling of this Court in *Barenblatt* v. *United States,* 360 U.S. 109 (1959), and lack of right to equitable relief to prevent criminal prosecutions. Appellees did *not* include a claim of privilege under the Speech or Debate Clause. After receiving briefs and oral argument (3 R. 31-38; 4 R. 44), the three-judge court *unanimously* denied appellees' motion to dismiss, and directed all appellees to answer the complaint (4 R. 52, Nov. 8, 1967.)

Thereafter, appellees filed answers to the complaints in which many of the material allegations thereof are denied, and affirmative matters are set forth. The answers contain ten affirmative defenses. *The Speech or Debate Clause is not referred to or relied upon in the answers.* (4 R. 56; 5 R. 68.)

The appellees then filed a motion for summary judgment with affidavits in support thereof, the purport of which are that (1) the hearings held in Chicago, Illinois in May, 1965 were duly authorized by the House of Representatives and by the full Committee, and (2) the Committee members and its employees are not responsible

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* In denying appellants' motion to join the prosecutors as defendants, Judge Hoffman stated that ". . . I cannot find that without the [prosecutors], complete relief cannot be accorded [appellants] . . ." Several days later, Judge Hoffman inconsistently denied appellants' motion for a temporary restraining order to prevent presentation of the contempt resolutions to the grand jury on the ground that such an order would be ineffective since the prosecutors were not parties to the case. (4 R. 53 pp. 96, 110-122; see further, 3 R. 39, 4 R. 41-43, 46-49.)

for the divulgence of appellants' names to the press prior to the opening of the hearings. Again no claim of congressional privilege was made. Appellants filed affidavits in opposition with respect to the pre-hearing release of names of subpoenaed witnesses, and the Court took the motion for summary judgment under advisement on briefs. (4 R. 62-63; 5 R. 70-73, 76, 78.)

Appellants served written interrogatories and a motion for production of documents, which the Court took on briefs. (4 R. 55, 59, 64-66; 5 R. 69, 72-73, 77, 80.) On March 1, 1968, the Court unanimously denied appellees' motion to stay discovery pending disposition of the motion for summary judgment, and directed appellees to respond to certain written interrogatories and to produce certain documents commencing April 12, 1968. (5 R. 86.) Appellants then served notice for the taking of the depositions of the Staff Director and two investigators of the Committee. (5 R. 85.)

Thus, with the case almost three years old, the pleadings at issue and discovery under way, the appellees had not interposed (either in the trial court or on appeal) a claim of congressional privilege based on the Speech or Debate Clause of the United States Constitution.*

On April 3, 1968, the Congressional appellees filed a motion to dismiss the complaints "by reason of Article I, Section 6, Clause 1 of the United States Constitution," the Speech or Debate Clause, and each Congressional defendant submitted a "Claim of Privilege and Exemption

* That Clause had not been overlooked however. In the motion to dismiss appellants' first appeal, and in various briefs filed by the Committee, the Speech or Debate Clause was mentioned in a makeweight argument that appellants could not maintain an action for *recovery of damages* against the Congressional appellees.

From Suit." Appellees requested that discovery be stayed pending the ruling on this motion, and prayed for certain other protective orders with regard to pre-trial discovery.

The prosecutor-appellees did not move to dismiss or claim a privilege or exemption from this suit. The Court took these motions under advisement on briefs, and stayed discovery until the end of June, 1968. (5 A. 90-97.)

On June 26, 1968, a majority of the three-judge Court entered summary judgment dismissing appellants' action as to all appellees on the grounds (i) that appellants' action against the Congressional appellees was barred by the Speech or Debate Clause, and (ii) that the action against the prosecutors was "ancillary" to the action against the Congressional appellees. (Appendix 1 to this brief; 5 R. 98.) The majority observed that this Court has never ruled on the issues presented by the motion to dismiss, namely, "whether the legislative immunity provided by the Speech or Debate Clause may be asserted in an action seeking only equitable relief and a declaratory judgment, and in an action brought to redress a deprivation of First Amendment rights." The Court conceded that the Speech or Debate Clause did not deprive the Court of jurisdiction of plaintiffs' action, and that in order for that Clause to protect a legislator, "it must be demonstrated that he is engaged in a legitimate legislative activity." The Court stated that the determination of this question "is more appropriate in a summary judgment setting," and that "we have treated the Claims of Privilege and Exemption from Suit as affirmative defenses to the actions and find, on the defendants' motion for summary judgment, that the Speech or Debate Clause is a complete legal defense to both ac-

tions. In view of the fact that these cases were commenced more than three years ago, the Court will not require amended pleadings or new motions for summary judgment presenting the defense of immunity to the Court. We will treat the motion of the Congressional defendants to stay discovery and dismiss the actions under the pending motion for summary judgment and allow both motions of the Congressional defendants. The relief sought against the Attorney General and the United States Attorney is ancillary to the claims against the Congressional defendants and the actions will be dismissed as to the Attorney General and the United States Attorney."

Thus, because of the unorthodox procedure adopted by the majority, appellants were never afforded an opportunity either to submit counter-affidavits on the question of whether the activities of the Congressional appellees brought them within the scope of the Speech or Debate Clause, or to brief the question of whether summary judgment was appropriate.

In dissent, Circuit Judge Walter J. Cummings, Jr. pointed out:

First, the Speech or Debate Clause was not intended to apply to civil cases involving the constitutionality of legislation, where no monetary damages or other personal relief is sought.

Second, through "belated resort to the Speech or Debate Clause, this Court should not evade the mandate of *Stamler* v. *Willis,* 371 F.2d 413 (7th Cir. 1966), holding that this complaint presents a substantial constitutional question, and that the breadth of Rule XI should be measured against this Committee's conduct over the years . . ."

Third, "... the *Stamler* opinion contemplated that this judicial reexamination was to occur in this proceeding rather than in subsequent criminal proceedings.... these plaintiffs, like those in *Dombrowski* v. *Pfister,* 380 U.S. 479, should be permitted to raise these questions in a civil proceeding not inhibiting the full exercise of their First Amendment rights. They should not have to go through years of criminal litigation as in *Gojack* v. *United States,* 384 U.S. 702, where the defendant had to stand trial twice, was convicted twice, appealed unsuccessfully twice, obtained a new trial from the Supreme Court and finally the dismissal of charges against him in the Supreme Court."

Fourth, "Even more than in *Dombrowski* v. *Pfister, supra,* these plaintiffs are entitled to an adjudication of their civil complaint. There the allegedly overbroad statute was new and had not been judicially construed, so that any threat to free expression might have been obviated *ad limine.* Here it is alleged that the interpretation put on Rule XI during the approximately 30 years of the the Committee's existence exacerbates the overbreadth of the Rule, and it has already been held that plaintiffs' allegations raise a substantial constitutional question *(Stamler* v. *Willis, supra).* Therefore, *Dombrowski* surely requires this Court to permit this civil litigation to proceed."

Fifth, the majority erred in dismissing the action against the prosecutors.

Appellants filed a notice of appeal to this Court under 28 U.S.C. §1253.

SUMMARY OF THE PLEADINGS

The following is a summary of the allegations contained in appellants' two complaints (1 R. 2; 2 R. 4):

The Committee's legislative charter, Rule XI, is so vague and sweeping that it is unconstitutional on its face. Moreover, the course of conduct engaged in by the Committee over the years, including its conduct during the 1965 Chicago hearings, has given a content and meaning to Rule XI which render it repugnant to the First and Fifth Amendments, to the Bill of Attainder Clause (Article I, Section 9, Clause 3), and to Article III of the Constitution.

The Committee has used Rule XI publicly to expose personal opinions and associations of private citizens and groups, particularly those whose economic, political and social philosophies differ from those of a majority of the Committee, and has visited public scorn and obloquy upon those persons and groups, and deterred them and others in the free exercise of their First Amendment freedoms. Many citizens fear the risk of being called before the Committee, and in order to avoid that risk they forego exercise of their rights of freedom of speech, assembly, petition and other rights guaranteed them by the United States Constitution.

The hearings held in Chicago typify the way in which Rule XI has been used by the members of the Committee over the years. Prior to the hearings, the Committee or its agents deliberately released to the news media the names of appellants and other persons subpoenaed to appear before the Committee in May, 1965 in Chicago. The resulting publicity caused great harm to appellants in their professional and private lives and reputations.

The hearings held in Chicago in May, 1965 served no legitimate legislative purpose, since the only testimony received by the Committee was from its two friendly witnesses who had already been heard by the Committee in executive session. Moreover, about one-half of the questions and testimony related to events which allegedly occurred prior to 1960,* and which were so stale and outdated as to be of no assistance to the Committee or the Congress in carrying out a legislative function.

The Committee violated Rule 26(m) of the House of Representatives in refusing to grant executive sessions as to all testimony by or concerning appellants, despite the knowledge of the Committee and its counsel that inquiries would be put to witnesses which were defamatory of appellants, including allegations that they had been active members of the Communist Party.

The subpoenaed witnesses made it clear from the outset that they did not intend to answer the leading and defamatory questions put to them by Committee counsel. Those question did not elicit any information, and served only to bring public embarrassment and scorn upon the witnesses and others who were mentioned in the questions.

The Chicago hearings were conducted in so tumultuous and undignified a manner, and deviated so radically from minimum standards of orderly procedure, that witnesses could not reasonably be expected to attend and answer the Committee's questions.

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* All of the Committee's questions regarding appellants related to alleged pre-1958 events. It is alleged in the complaints that Mrs. Hall was subpoenaed at the instigation of a group of Chicago area property owners who are opposed to her efforts in behalf of Negroes' civil rights.

At the time appellants were called to testify by the Committee, they had not been given any explanation of the purpose of the hearings or why they had been called to testify before the Committee, so that they were unable to determine the thrust of the hearings or relevancy of any question which might be put to them; Mrs. Hall's name had not been mentioned in testimony, and Dr. Stamler had been referred to in a single hearsay reference; appellants had been denied the right to cross examine the Committee's witnesses or to examine the Committee's evidence concerning them; they had been named by Committee counsel in many defamatory but unanswered questions; they had wrongfully been denied executive sessions; and their counsel had been physically abused and threatened.

Great harm has befallen appellants as a result of the Committee's conduct, namely, (1) Dr. Stamler and Mrs. Hall were required to sign unique loyalty oaths in order to retain their employment, (2) threats of violence have been made to Dr. Stamler because of the legal position he took before the Committee, (3) Mrs. Hall's employer has given consideration to whether she should be dismissed from her employment, (4) upon return of the criminal indictments, Dr. Stamler was placed upon inactive non-salaried status by the Board of Health and his salary placed in escrow, and (5) Dr. Stamler's important medical research has been jeopardized as a result of the Committee's activities.

In their answers (4 R. 56; 5 R. 68), appellees deny many of the allegations of appellants' complaints, and they set out the affirmative defenses of lack of jurisdiction of subject matter and parties, adequate remedy in the criminal cases and mootness. In addition, the prosecutors aver that the doctrine of separation of powers renders them immune from the Court's injunctive powers.

In addition to the foregoing pleadings, the parties have filed affidavits regarding appellees' motion for summary judgment, which place at issue the question of whether the Committee was responsible for the pre-hearing release of witnesses' names. (5 R. 70, Items M to P; 5 R. 76, affidavits of appellants, Gutman, Stearns and Shufro.)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Introduction

This case is in an extraordinary posture. The Court of Appeals for the Seventh Circuit ruled in 1966 that appellants' complaints set forth substantial constitutional questions and present *prima facie* grounds for equitable relief, and directed that three-judge courts be convened to hear the cases. The court held that the Committee's charter, Rule XI, should be read and interpreted in the context of the Committee's conduct over the years, and that this judicial examination should occur in this civil proceeding. (Appendix 3.) The Committee had full opportunity to seek review of this decision in this Court, but did not do so.

In 1967, a majority of the three-judge court convened pursuant to the Court of Appeals' mandate directed that the prosecutors be added as parties defendant, and unanimously rejected a host of grounds submitted in support of the appellees' motion to dismiss the complaints.

Thus, as the case was about to enter its fourth year, the pleadings were at issue and pre-trial discovery was under way. It was at this juncture that, for the first time, the Speech or Debate Clause of the United States Constitution was interposed as a bar to appellants' action against the Congressional appellees.

In June, 1968, without giving appellants an opportunity to submit counter-affidavits, a majority of the three-judge court ruled that the motion to dismiss would be treated as a motion for summary judgment, and dismissed the complaints upon the basis of a novel interpretation of the Speech or Debate Clause, coupled with a ruling that dismissal of the Congressional appellees somehow required dismissal of the prosecutors. Appellants' entire action was abruptly terminated on the eve of trial after more than three years of active and hotly contested litigation involving serious and fundamental federal constitutional issues.

In light of this background, there is justification for Circuit Judge Cummings' charge, in his dissenting opinion, that the majority of the three-judge court "through belated resort to the Speech or Debate Clause" has attempted to evade the mandate of *Stamler* v. *Willis,* 371 F.2d 413 (7th Cir. 1966). Judge Cummings added:

> " . . . this Court has already unanimously denied the Government's motion to dismiss and permitted limited discovery and should not now back-track from the forthright position previously taken merely to avoid passing upon the difficult and weighty questions presented."

The issues tendered by this case go far beyond the personal interests of the three appellants. Those issues involve basic questions of federal constitutional law, not the least of which is whether citizens whose First Amendment rights have allegedly been trammelled by a committee of Congress are entitled, under the principles enunciated by this Court in *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965), to seek vindication of those rights in a civil rather than a criminal forum. Also involved is the far-reaching question of whether the House Committee on Un-Ameri-

can Activities has so consistently used its charter to pillory witnesses and chill free exercise of First Amendment rights that it has given a meaning to that charter which renders it repugnant to the United States Constitution.

Appellants urge that this Court summarily dispose of this last minute effort to evade the mandate of the Seventh Circuit, and remand the cause for trial on the fundamental issues involved, or in the alternative hold that the Committee's charter is repugnant to the Constitution of the United States (see Part III below).

I.

THE COURT BELOW WAS CLEARLY WRONG IN DISMISSING THIS ACTION AGAINST THE ATTORNEY GENERAL AND THE UNITED STATES ATTORNEY.

The majority of the court below ruled, *sua sponte*, and without having afforded appellants an opportunity to be heard on the issue, that appellants' action against the prosecutors is "ancillary" to their action against the Congressional appellees, and that dismissal of the Congressmen therefore required dismissal of the prosecutors. The court cited no authority whatever, and offered no explanation of the meaning of the word "ancillary" as applied here.

The majority's reason for dismissal of the prosecutors is contradictory of an earlier ruling by the three-judge court. District Judge Hoffman, who wrote the majority opinion below, had ruled in July, 1967 that an injunction against the Congressional appellees would not preclude prosecution of the criminal cases because the order would not bind the prosecutors. It was upon the basis of this very ruling that appellants persuaded the full three-judge

court to reverse Judge Hoffman's denial of the motion to add the prosecutors as parties defendant. Their presence as defendants was necessary to an effective restraint of the prosecution of the indictments.

Accordingly, since the time that the indictments were returned against appellants in July, 1967, the prosecutors have become important and in fact necessary defendants.

In *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880), and *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), this Court held that the Speech or Debate Clause barred civil actions for damages against congressmen, but permitted the actions to continue against non-congressional defendants. If the cause of action in *Kilbourn* against the House Sergeant at Arms was not "ancillary" to the suit against the congressmen, and if the cause of action in *Dombrowski* against Committee counsel Sourwine was not "ancillary" to the suit against Senator Eastland, then by the same token appellants' causes of action against the United States Attorney and the Attorney General are not "ancillary" to their suits against the members of the Committee.

Moreover, the prosecutors did not claim protection under the Speech or Debate Clause; nor did they join in the motion to dismiss made by the Congressional appellees in April, 1968; nor did the majority of the court below seek to justify dismissal of the prosecutors on the Speech or Debate Clause or any other privilege.

The majority's only justification for dismissal of the action against the prosecutors was the *sua sponte* and wholly unsupported and unexplained "ancillary" concept. Therefore, unlike *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), and *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880),

this case involves no question of whether the privilege created by the Speech or Debate Clause immunizes the prosecutors, as non-members of Congress, from appellants' suit.

A judgment against the prosecutors — with or without the Congressional appellees as parties — can afford appellants all of the relief they request, including a declaratory judgment that Rule XI is unconstitutional, and an injunction restraining prosecution of the criminal cases pursuant to the principles expressed in *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) and *Ex Parte Young*, 209 U.S. 123 (1908); see also *Reed Enterprises* v. *Corcoran*, 354 F.2d 519 (D.C. Cir. 1965); *United States* v. *Wood*, 295 F.2d 772 (5th Cir. 1961).

The majority of the court below was clearly wrong in ruling that appellants' action against the prosecutors is "ancillary" to their action against the Congressional defendants and therefore must be dismissed if the Congressional appellees are immunized from suit by the Speech or Debate Clause.

The three-judge court has already determined that appellants' complaints set forth a valid cause of action against the Attorney General and the United States Attorney. The judgment dismissing appellants' complaints as to the prosecutors should be reversed and the cause remanded to the three-judge court with directions that the case proceed to trial.

II.

THIS APPEAL PRESENTS NOVEL AND IMPORTANT ISSUES REGARDING THE SPEECH OR DEBATE CLAUSE OF THE UNITED STATES CONSTITUTION.

A.

The Speech Or Debate Clause Was Not Intended To Prohibit A Civil Action Against Congressional Defendants Wherein the Plaintiff Does Not Seek Damages Or Other Personal Relief Against the Defendants, But Rather Asks the Court To Adjudicate the Constitutionality of An Act of Congress Which the Congressional Defendants Are Enforcing.

This Court has held that the Speech or Debate Clause prohibits civil suits for damages against members of Congress where the plaintiff's cause of action arises out of legitimate legislative activities. *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880); *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967). The Court has never *expressly* ruled, however, upon the question whether that clause precludes civil actions, such as the case at bar, in which the plaintiff seeks a declaratory judgment as to the constitutionality of an Act of Congress, injunctive relief against members of Congress and other officials who are enforcing the Act, but does not seek damages or any other personal relief.

Several recent decisions of this Court lend strong support to the view expressed by Circuit Judge Cummings in his dissenting opinion (Appendix 1) that the Clause is inapplicable in cases such as this. *Bond* v. *Floyd,* 385 U.S. 116 (1966), and *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965)

were suits in which this Court awarded declaratory judgments and injunctive relief against members of state legislatures. See also *Bush* v. *Orleans Parish School Board,* 191 F.Supp. 871 (E.D. La. 1961), aff'd. 367 U.S. 908.* It would be impertinent to suggest that the members of this Court were unaware of, overlooked, or intended impliedly to overrule the holding of *Tenney* v. *Brandhove,* 341 U.S. 367, 372-376 (1951) that state legislators are protected by a common law privilege from civil suits commensurate with that afforded federal congressmen by the Speech or Debate Clause. Likewise it would be impertinent to suggest that in those cases the attorneys for the defendant-legislators failed to assert a complete defense available to their clients.

There is a simple explanation as to why this Court and the defendants in those cases did not assert that the legislative privilege of the Speech or Debate Clause was a bar to suit. It is the same reason why, for almost three years, the Congressional appellees in the case at bar made no claim of privilege—the privilege was not intended and (until the decision of the court below was rendered) has never been held to preclude equity actions involving the constitutionality of legislation, in which no personal relief is sought against the legislator-defendants.**

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* Lower federal courts too have granted equitable relief against state legislators. *Jordan* v. *Hutcheson,* 323 F.2d 597 (4th Cir. 1963); *Liveright* v. *Joint Committee,* 279 F.Supp. 205 (M.D. Tenn. 1968).

** In *Powell* v. *McCormack,* 395 F.2d 577 (D.C. Cir. 1968), petition for certiorari pending No. 138, Judge Berger stated "it would seem that, although we need not decide," the Speech or Debate Clause barred an action to require the House of Representatives to seat an elected member. (395 F.2d at 602.) This dictum was not concurred in by the other two members of the court. *Powell* is inapposite in any event because the plaintiffs in that case sought a mandatory injunction to require members of the House to seat Powell.

Upon the basis of a general dictum in *Tenney,* the majority of the court below held that the Speech or Debate Clause was intended to protect members of Congress from having to retain counsel to defend *any kind* of civil action in which legislative activities are involved. But as Circuit Judge Cummings observed in his dissenting opinion, the Committee members are entitled to have government counsel defend them in cases such as this — as was done in the case at bar — under 2 U.S.C. §118. They therefore run no risk of personal cost of suit or of personal liability.

The Speech or Debate Clause has its roots in English history. Its purpose was to enhance and further legislators' freedom of action by prohibiting suits in which they might be held liable, civilly or criminally, for their legislative activities. This salutary purpose will not be impinged upon by permitting litigation concerning the constitutionality of legislation, in which government attorneys represent the legislators without charge, and in which there is no risk of personal liability on the part of the legislators.

In *Kilbourn* and *Tenney,* this Court relied in part on the Massachusetts case of *Coffin* v. *Coffin,* 4 Mass. 1 (1808), in which the Supreme Judicial Court of Massachusetts construed that state's constitutional Speech or Debate Clause. That same court recently passed upon the issue now before this Court. In assessing this decision, it should be noted that the Massachusetts constitutional provision is broader than the federal Speech or Debate Clause. In *Luscomb* v. *Bowker,* 334 Mass. 468, 136 N.E.2d 192 (1956), plaintiff was named as a member of the Communist Party in a report about to be filed by a Massachusetts legislative commission formed under a charter

similar to Rule XI. Plaintiff brought suit against the members of the commission for a declaratory judgment and injunctive relief to expunge the report and to prevent its publication. After discussing *Kilbourn, Tenney, Coffin* and other cases, the court said (136 N.E.2d at 197):

> "In none of the authorities above cited do we find any support for the proposition that a member of the legislature is exempt from suit by an individual designed to test the constitutionality of action of the legislator."

Members of the other branches of government have no sweeping privilege such as that created for legislators by the Court below. For example, the executive branch has an absolute privilege from civil damages suits arising from official action. *Barr* v. *Matteo*, 360 U.S. 564 (1959). But that privilege has never been held to bar actions against high-ranking executive officers for declaratory judgment to determine the constitutionality of the act under which the officer is acting, or the legality of his conduct, and for appropriate injunctive relief.*

Similarly, the judiciary has long been held to enjoy a broad immunity from civil damage suits. *Bradley* v. *Fisher*, 80 U.S. (13 Wall.) 335 (1871); *Pierson* v. *Ray*, 386 U.S. 547 (1967). This immunity, however, has not been held to preclude courts from adjudicating the validity of judicial action and granting affirmative relief in mandamus actions in which the judge himself is the defendant. E.g., *LaBuy* v. *Howes Leather Co.*, 352 U.S. 249 (1957).

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* E.g., *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), (Secretary of State); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964) (Attorney General of the United States); *Currin* v. *Wallace*, 306 U.S. 1 (1939) (Secretary of Agriculture); *Zemel* v. *Rusk*, 381 U.S. 1 (1965) (Secretary of State); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952) (Secretary of Commerce).

The holding of the majority of the court below, if accepted, would seriously undermine the rule of *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137 (1803) that federal courts have power to determine whether legislation of the Congress is consistent with the Constitution. The federal courts' jurisdiction to exercise that power is not vitiated because the persons who are enforcing the legislation, and who therefore are proper defendants in a civil action to enjoin enforcement of the legislation, happen to be members of Congress.

By granting immunity to the Committee members, and dismissing the prosecutors as well, the court below has remitted appellants to their defenses in the pending criminal cases and deprived them of the opportunity of obtaining relief in a civil forum under the principles of *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965). Those salutary principles have thereby been stultified by the ruling of the majority below. This Court has recognized that defense of a criminal case may not insure vindication of First Amendment rights, and that the criminal judgment often does not resolve the basic issues. *Baggett* v. *Bullitt,* 377 U.S. 360, 378 (1964); *Dombrowski* v. *Pfister,* 380 U.S. 479, 490-491 (1965). Even the successful defense of a criminal prosecution may be inadequate to protect First Amendment rights. Compare *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, 284 (1961). Appellants are entitled to an adjudication of the merits of their claim (which the court below unanimously upheld against a previous motion to dismiss) that they are entitled to relief in this civil case rather than having to defend the criminal indictments.

We respectfully submit that the Court should note jurisdiction to resolve the novel and substantial question presented here as to the application of the Speech or Debate Clause in cases such as this.

B.

Entry of Summary Judgment Was Erroneous Because (1) There Is An Issue As To Whether the Activities of the Committee Members Were Legitimate Legislative Activities So As To Bring Them Within the Protection of the Speech Or Debate Clause, (2) The Committee Members Waived Any Privilege or Exemption From Suit Afforded Them By The Clause, and (3) Appellants Were Improperly Deprived of the Right To Submit Affidavits In Opposition To Appellees' Motion.

Even if it is assumed, *arguendo,* that the Speech or Debate Clause is applicable in cases such as this, there is presented on this record the question whether the court below correctly entered summary judgment for the Congressional appellees (and perforce for the prosecutors).

(1)

The majority of the court below erred by ignoring the issue of fact as to whether the activities of the Congressional appellees, upon which this action is based, are within the purview of the Clause which protects legislators while "acting in the sphere of legitimate legislative activity." *Tenney* v. *Brandhove,* 341 U.S. 367, 376 (1951).

Thus, the Speech or Debate Clause does not afford limitless license to members of Congress. The boundaries of the privilege are established by the courts, not the legisla-

ture, as this Court said in *Tenney* v. *Brandhove,* 341 U.S. 367, 376-7 (1951):

> ". . . The House of Commons' claim of power to establish the limits of its privilege has been little more than a pretense since *Ashby* v. *White,* 2 Ld. Raym. 938, 3 id. 320. This Court has not hesitated to sustain the rights of private individuals when it found Congress was acting outside its legislative role. [Citing cases.]"

Neither does the power of Congress to conduct investigations grant a *carte blanche* to legislators. As Mr. Justice Brennan said in *Hutcheson* v. *United States,* 369 U.S. 599, 624 (1962) (concurring opinion):

> ". . . Investigation conducted solely to aggrandize the investigator or punish the investigated, either by publicity or by prosecution, is indefensible—it exceeds the congressional power: exposure for the sake of exposure is not legislative inquiry."

In *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), this Court held that summary judgment was improperly entered in favor of counsel to a legislative committee against whom damages were sought. There, as here, a genuine issue of fact existed as to whether the conduct in question was protected by the privilege, hence the plaintiffs were entitled to go to trial on that issue. (387 U.S. at 84-85.)*

The Court of Appeals for the Fifth Circuit reached the same conclusion in a related case, *Pfister* v. *Arceneaux,* 376 F.2d 821 (5th Cir. 1967), a civil action for injunctive relief and for damages brought against members of a state legislative investigating committee (376 F.2d at 823):

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* As to the Congressional defendant, Senator Eastland, the Court found no genuine fact issue: "The record does not contain evidence of his involvement in any activity that could result in liability." (387 U.S. at 84.)

> ". . . Resolution of this issue i.e., whether Pfister made such a statement and whether it was accurate has a serious bearing on the question whether Pfister and the other members of the committee were 'acting in the sphere of *legitimate* legislative activity', which would entitle them to immunity." (Emphasis the Court's.)

Similarly, in the case at bar, the disputed issues of fact concerning the course of conduct engaged in by members of the Committee have a bearing upon whether they were engaged in legitimate legislative activity which entitled them to immunity. See also *Wheeldin* v. *Wheeler*, 373 U.S. 647, 650-1 (1963), dealing with an investigator for the Committee, and *Hughes* v. *Johnson*, 305 F.2d 67, 70 (9th Cir. 1962), dealing with immunity from liability of federal game wardens.

The complaints aver that the activities of the Committee members pursuant to Rule XI were *not* legitimate legislative activities, and had no legislative purpose, but rather were unlawful acts which resulted in pillorying of and injury to witnesses, and a chilling of free exercise of First Amendment rights by the entire citizenry. The appellees denied these allegations, thus placing them in issue. There are no affidavits directed to this point. These pleadings create a fact issue which cannot be determined without trial. The majority of the court below concedes this to be true, saying:

> " . . . These exhibits [filed by the appellees] do not disprove plaintiffs' allegations that the conduct of the Committee gives an unconstitutional gloss to House Rule XI . . . "

The kinds of extraordinary activity pursued by this Committee since its inception defy summary description. Under cover of a paper-thin facade of legality—which has been paid greater lip service since *Watkins* v. *United*

States, 354 U.S. 178 (1957) — the Committee fulfills no legitimate legislative function, and instead assumes the role of the official exposer of supposedly "subversive" persons, ideas and organizations, and as a grand jury inquiring into and deciding political orthodoxy. Exposure and pillorying — of people, ideas and groups — is an end in itself, and the only real end of the Committee's hearings.* The legislative product of the Committee's labors is miniscule; it is summarized in Appendix 4, pp. 148 to 154. But the injury worked by the Committee upon witnesses and their families, upon organizations of citizens, and upon the free flow of ideas in this country, is incalculable. So that the Court will know this is not mere rhetoric or hyperbole, we have set out in Appendix 4, specific examples of reprehensible Committee conduct during hearings conducted in the past 20 years, as well as reports of the harm done to citizens of this country by the unlawful course of the Committee's conduct.

In addition, appellants have commissioned a scientific sampling of the official transcripts of the 174 hearings held by the Committee from 1946 through 1967. The study was conducted by Hans Zeisel, Professor of Law and Sociology of the University of Chicago Law School, who is a world renowned expert in this field. The preliminary results of the study are set forth in full in Appendix 5. Three conclusions stand out:

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* ". . . Lacking these casualties, the people whose reputations and livelihoods have been blithely hazarded, the Committee's career would lack meaning. They are its achievement. It has established a record not of laws but of Fifth Amendment pleas and contempt citations and disrupted lives. The proudest exhibit of the Committee's thirty years is its spacious files filled with the names, associations, activities, and public utterances of thousands of Americans." Goodman, *The Committee* (Farrar, Straus and Giroux, 1968), p. 493.

First, the Committee has obtained virtually no information concerning "subversive" and "un-American" activities from the more than 2,000 non-Committee witnesses called before it.*

Second, thousands of pages of the Committee's transcripts are devoted to Committee counsel and members of the Committee putting long series of leading, defamatory and accusatory questions to non-Committee witnesses, which the witnesses repeatedly refuse to answer.

Third, almost 90% of the questions put to unfriendly witnesses (most of which went unanswered) relate to the witnesses' political, social and economic views, associations and activities, as distinguished from criminal or unlawful conduct.

These conclusions become even more striking when one considers that the Committee's own "friendly" witnesses, almost without exception, have given their testimony to the Committee in executive session before being called in public.

The ultimate conclusion from these facts is, as charged in appellants' complaints, that *the Committee is not engaged in any legitimate legislative investigation, but rather has and is engaged in a process of public exposure and pillorying of citizens whose political, social and economic beliefs are deemed "subversive" by the Committee.* The harmful effects of this misguided course of conduct upon the free exercise of First Amendment rights by our citizens is incalculable.

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* Apart from the 1966 Ku Klux Klan hearings, only 3% of all questions dealing with alleged misdeeds elicited positive information that was not more than 5 years old. (Appendix 5, p. 23; computation based on Table 17.)

The majority of the court below asserted that "plaintiffs challenge the motive of the defendants." The short answer is found in Judge Cummings' dissent:

> ". . . It is the effect of their conduct that is at issue here, not their motives."

The Speech or Debate Clause does not shield members of Congress from judicial scrutiny into unlawful conduct. Appellants are prepared to prove the Committee's continued course of unlawful conduct, and to introduce testimony of witnesses concerning the obloquy visited upon citizens and injury done our cherished rights by the actions of this purportedly legislative body. The issues of fact thus raised should be heard and disposed of by the court below before any determination is made regarding application of the Speech or Debate Clause.

(2)

Appellants Stamler and Hall adopt the position of appellant Cohen in Part III of the Jurisdictional Statement filed by him in this Court, that is, the Congressional appellees have waived any right or privilege afforded them by the Speech or Debate Clause.

(3)

We have summarized above how the majority below treated the Congressional appellees' motion to dismiss as a motion for summary judgment, without first affording appellants an opportunity to submit counter affidavits in accordance with the procedure established by F.R.C.P. 56(c). The unfair procedure adopted by the majority, without prior notice to appellants, does not meet the requirements of either the Federal Rules of Civil Procedure or the Due Process Clause. *Erlich* v. *Glasner*, 374 F.2d 681, 683 (9th Cir. 1967).

It is ironic that the court's reason for depriving appellants of their right to be heard is that "These cases were commenced more than three years ago." The age of the cases and the vast amount of time, effort and expense put into them by the courts, the parties and counsel would seem to call for careful adherence to orderly procedures, rather than precipitous dismissal of the case without affording appellants an opportunity to be heard.

At the very least the judgment appealed from should be reversed with directions that appellants be given an opportunity to submit counter affidavits to demonstrate that the conduct complained of on the part of the Committee was not legitimate legislative activity, and therefore is not immunized by the Speech or Debate Clause.

III.

IF PLENARY CONSIDERATION IS GIVEN TO THIS CASE, THE COURT SHOULD REVIEW THE IMPORTANT QUESTION OF WHETHER THE COMMITTEE'S CHARTER IS UNCONSTITUTIONAL ON ITS FACE.*

The Act of Congress which established the Committee was enacted in 1946 as a part of the Legislative Reorganization Act (60 Stat. 812, 828, Rule XI, 18(b)):

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic

* The Court accepted this issue for review by its unlimited grant of certiorari in *Gojack* v. *United States*, 384 U.S. 702 (1966), but reversed on another ground.

origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.''

Regarding this enactment, this Court said in *Watkins* v. *United States,* 354 U.S. 178, 202 (1957):

> ''It would be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of 'un-American'? What is that single, solitary 'principle of the form of government as guaranteed by our Constitution'?''

A.

The Vagueness of the Rule Chills Citizens in the Exercise of First Amendment Rights.

In *Barenblatt* v. *United States,* 360 U.S. 109 (1959), by a 5 to 4 vote, this Court upheld Rule XI against a charge of vagueness, holding that the Committee's activities over the years had shown that ''the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country'', and that Rule XI, as applied to investigation of Communist influences in education, is not so vague as to deny adequate notice and due process.* (360 U.S. at 118.)

Since *Barenblatt,* however, a new understanding of the vice of vagueness in the First Amendment area has evolved under which the Court has declared unconstitutional many statutes like Rule XI whose vagueness ''chills'' the exer-

* In *Barenblatt,* the vagueness attack was not couched in First Amendment terms. As the Court there said, "What we deal with here is whether petitioner was sufficiently apprised of 'the topic under inquiry' thus authorized 'and the connective reasoning whereby the precise questions asked relate[d] to it'." (360 U.S. at 124).

cise of First Amendment rights of citizens.*

Should the Court direct oral argument in this appeal, the issue of facial constitutionality of Rule XI should be re-examined in light of these post-*Barenblatt* decisions.

The controlling principles are expressed in *NAACP* v. *Button* and *Baggett* v. *Bullitt*:

> " . . . The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.
>
> * * *
>
> " . . . Broad prophylactic rules in the area of free expression are suspect. [Citations omitted.] Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." (371 U.S. at 432-33, 438.)
>
> "We are dealing with indefinite statutes whose terms, even narrowly construed, abut upon sensitive areas of basic First Amendment freedoms. The uncertain meanings of the oaths require the oath-taker— teachers and public servants— to 'steer far wider of

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* *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961) (Florida loyalty oath statute); *NAACP* v. *Button*, 371 U.S. 415 (1963) (Virginia anti-solicitation statute); *Baggett* v. *Bullitt*, 377 U.S. 360 (1964) (Washington State loyalty oaths); *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) (Louisiana statutes dealing with subversion and Communism); *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966) (Arizona State employee loyalty oath statute); *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967) (New York teacher loyalty oath statute); *Whitehill* v. *Elkins*, 389 U.S. 54 (1967) (Maryland teacher loyalty oath statute).

> the unlawful zone,' *Speiser* v. *Randall*, 357 U.S. 513, 526, than if the boundaries of the forbidden areas were clearly marked." (377 U.S. at 372.)

"Granting the vagueness of the Rule," the then majority of the Court in *Barenblatt* nevertheless held that because Rule XI had been interpreted by the Committee as applying at least to Communists, it was not vague as to Communists and could constitutionally be applied to them. (360 U.S. at 117-121.) However, this holding has been seriously undermined by the cases just discussed, and in particular by the holding in *Whitehall* v. *Elkins*, 389 U.S. 54 (1967). In *Whitehill*, this Court applied the newly formulated principles and held that a limited and definite intepretation—such as the interpretation which the *Barenblatt* majority attributed to Rule XI—will not cure an overly broad and vague statute in the First Amendment area. In striking down a Maryland teacher's oath statute despite restrictive state interpretations of the words "overthrow, destruction or alteration of the constitutional form of government . . . by revolution, force or violence" and "membership in a subversive organization,"* this Court said (389 U.S. at 59-60, 61-62):

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* Compare the similar phraseology of Rule XI, quoted above. The Committee itself recognizes the deficiencies of its charter, and has proposed a drastically revised charter. Supporting the adoption of the proposed revision, Rep. Ichord, a member of the Committee, addressed the House on July 19, 1968, as follows:

> "Admittedly [Rule XI] is extremely vague and ambiguous.
>
> * * *
>
> "Why become bogged down in argument and legal battles over whether activities are American or un-American when more precise language can be used." 114 Cong. Rec. H7092-3 (daily ed. July 19, 1968). (See also remarks of Rep. Ashbrook, 114 Cong. Rec. H6314-5 (daily ed. July 10, 1968).)

> "We are in the First Amendment field. The continuing surveillance which this type of law places on teachers is hostile to academic freedom.
>
> * * *
>
> "The lines between permissible and impermissible conduct are quite indistinct. Precision and clarity are not present. Rather we find overbreadth that makes possible oppressive or capricious application as regimes change."

The principles laid down in these cases apply with full force to Rule XI.* Not only is violation of Committee subpoenaes punishable criminally, but receipt of and compliance with a Committee subpoena together with the attendant publicity and disruption of personal life constitutes a severe sanction. (See Appendix 4.) To avoid suffering those sanctions, citizens may be expected to tailor their conduct to "steer far wider of the unlawful zone," and, for fear of the consequences, to cease to engage in conduct which is *not* within the legitimate purview of the investigating committee, but which is nevertheless relentlessly "exposed" by the Committee. The upshot is a chill on freedom of expression and association and the diminution of vigorous debate on political, economic and social issues. To paraphrase *Keyishian,* " . . . the uncertainty as to the scope of [Rule XI's] proscriptions make it a highly efficient *in terrorem* mechanism." (385 U.S. at 601.)

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*As Justice Brennan recently said concurring in *United States* v. *Robel,* 389 U.S. 258, 275 (1967):

> ". . . the numerous deficiencies connected with vague legislative directives, *whether to a legislative committee,* to an executive officer, to a judge and jury or to private persons are far more serious when liberty and the exercise of fundamental rights are at stake." (Citations omitted, emphasis added.)

B.

Rule XI Is Couched In Such Broad Terms That It Encompasses Areas Which Extend Beyond The Investigatory Powers of Congress.

Even assuming that Rule XI could be given a meaning which precisely defines its scope, that scope is so broad as to include subjects of investigation upon which the Congress could not properly legislate. Therefore, the Rule offends the First Amendment.

Rule XI on its face authorizes the Committee to investigate "un-American" and "subversive" "propaganda" and "propaganda activities." It thus sanctions inquiries into political beliefs and associations, pure and simple. The majority in *Barenblatt* recognized this broad sweep, but nevertheless held (360 U.S. at 127-8):

> "That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable.
>
> "[T]his Court in its constitutional adjudications has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character. [Citing cases] . . . this Court has recognized the close nexus between the Communist Party and violent overthrow of government."

However, under this Court's recent and controlling decisions — rendered since *Barenblatt* — political beliefs and associations alone, including Communist Party membership, may not be regulated, proscribed or punished absent a setting of *acts* which might be regulated. Accordingly, the sweeping inquiry authorized by Rule XI, even when

directed to Communist Party membership, can serve no legislative interest which counterbalances the strong interest of citizens in the protection of their First Amendment freedoms.

In *Schneider* v. *Smith,* 390 U.S. 17 (1968), this Court denied that the Congress had attempted to give the President authority to "probe the reading habits, political philosophy, beliefs, and attitudes on social and economic issues of prospective seamen on our merchant vessels." By way of contrast, the Court stressed that the statute relating to prevention of sabotage in the maritime industry speaks in terms of "actions", not beliefs or associations. (390 U.S. at 24-27.)

In *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967), this Court held unconstitutional a New York statute (previously upheld in *Adler* v. *Board of Education,* 342 U.S. 485 (1952)), making Communist Party membership *prima facie* evidence of disqualification to teach in public schools. Citing *Elfbrandt* v. *Russell,* 384 U.S. 11 (1966) and *Aptheker* v. *Secretary of State,* 378 U.S. 500 (1964), the Court said (385 U.S. at 606):

> "... mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion from such positions as those held by appellants."

In *United States* v. *Robel,* 389 U.S. 258 (1967), this Court struck down as violative of the First Amendment a provision making it criminal to be employed in a defense facility while a member of the Communist Party. "The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it. . . . That statute casts its net across a broad range of associational activities, indiscrimi-

nately trapping membership which can be constitutionally punished and membership which cannot be so proscribed." (389 U.S. at 265-66.)

See also, *United States* v. *Brown,* 381 U.S. 437, 456 (1965), holding that Communist Party members cannot be presumed to be likely to engage in political strikes, thus limiting *American Communication Workers Ass'n.* v. *Douds,* 339 U.S. 382 (1950); *Shelton* v. *Tucker,* 364 U.S. 479, 485-90 (1960); *United States* v. *Rumely,* 345 U.S. 41, 46-47 (1953).

These recent decisions cast grave doubt upon the validity of Rule XI as written. If plenary consideration is accorded this case, this important question should be resolved.

C.

Rule XI Is a Bill of Attainder.

The Bill of Attainder Clause prohibits legislative punishment without a judicial trial. *United States* v. *Brown,* 381 U.S. 437, 447 (1965); *Cummings* v. *Missouri,* 71 U.S. (4 Wall) 277, 323 (1866); *United States* v. *Lovett,* 328 U.S. 303, 315 (1946).

Recently, this Court injected new scope and meaning into the Bill of Attainder Clause, in *United States* v. *Brown,* 381 U.S. 437 (1965) (Section 504 of the Labor-Management Reporting and Disclosure Act of 1959 barring Communists from union office held unconstitutional). The Court severely limited its previous decision in *American Communications Workers Ass'n.* v. *Douds,* 339 U.S. 382 (1950), and made it clear that the Bill of Attainder Clause should be given a liberal interpretation "in light of the evil the Framers sought to bar: legislative punishment,

of any form of severity, of specifically designated persons or groups." (381 U.S. at 447.) The Court pointed out that the Bill of Attainder Clause was intended to limit legislators "to the task of rule making" and to prevent them from carrying out the rules by imposing punishment. (381 U.S. at 445, 446.)

Rule XI has consistently been used to inflict punishment upon particular persons or groups without the benefit of judicial trial. Throughout its existence, the practices of the Committee have had a demonstrably unfavorable effect upon the lives of those it has chosen as its victims. (Appendix 4 to this brief.)

The gross mistreatment of appellants and the other subpoenaed witnesses at the 1965 Chicago hearings, summarized above, exemplifies the Committee's misconduct over the years, and its practice of imposing severe punishment without due process of law or the protections afforded by the judiciary.

Although this Court has not yet ruled upon the issue, three members of the Court expressed the opinion in *Barenblatt* v. *United States,* 360 U.S. 109 (1959), that Rule XI *is* a Bill of Attainder (360 U.S. at 153-4, 162, dissenting opinion). This issue should be addressed and resolved if plenary consideration is given this case.

D.

Rule XI Is Unconstitutional In That The Committee Purports To Act As A Grand Jury With Investigatory And Inquisitorial Powers.

It is a fundamental constitutional principle that legislative committees may not exercise the investigatory powers of grand juries, which are in their nature judicial. In

Kilbourn v. *Thompson,* 103 U.S. 168 (1881), a landmark case limiting the extent of congressional investigatory powers, this Court said (103 U.S. at 192):

> "In looking to the Preamble and Resolution under which the committee acted, before which Mr. Kilbourn refused to testify, we are of opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial."

The *Kilbourn* case was summarized as follows by the Chief Justice in *Watkins,* 354 U.S. 178, 194 (1957):

> ". . . The Court found that the subject matter of the inquiry was 'in its nature clearly judicial and therefore one in respect to which no valid legislation could be enacted.' The House had thereby exceeded the limits of its own authority."

The Committee has assumed unto itself judicial and grand jury powers, by investigating alleged past nonconformist beliefs, deeds and associations of private citizens and groups, having no conceivable relationship to proposed legislation. This the Committee cannot do, nor may Congress authorize such investigations.

CONCLUSION

Plaintiffs-appellants respectfully submit that the issues presented herein are substantial, and that this Court should reverse the judgment below either summarily or after plenary consideration.

Respectfully submitted,

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APPENDIX 1

Opinion of three-judge court, June 26, 1968.

MEMORANDUM OF DECISION

Before CUMMINGS, Circuit Judge, HOFFMAN and NAPOLI, District Judges.

The plaintiffs, Jeremiah Stamler, M.D., and Yolanda F. Hall, and the intervening plaintiff, Milton M. Cohen, (hereinafter referred to as "plaintiffs") brought two actions against the chairman and members of the Committee on Un-American Activities of the United States House of Representatives. The Committee had scheduled hearings at Chicago, Illinois, for May 25 through May 27, 1965, and the plaintiffs were subpoenaed to appear and give testimony.

The first action brought by the plaintiffs challenged the constitutionality of the Legislative Reorganization Act of 1946, 60 Stat. 812, 828 (1946) which embodies Rule XI of the Rules of the House of Representatives establishing the charter of the House Un-American Activities Committee. A three-judge District Court was requested under 28 U.S.C. §§ 2283, 2284 and the plaintiffs prayed for an injunction restraining the members of the committee from conducting any hearings and taking any action to enforce the subpoenas served upon the plaintiffs. The action was dismissed by the District Court for lack of substantial federal question under *Barenblatt* v. *United States*, 360 U.S. 109 (1959) and the application for a three-judge Court was denied.

The Committee conducted the scheduled hearings and the plaintiffs attended but refused to testify. The plaintiffs then commenced a second action, again challenging the

constitutionality of House Rule XI and requesting the convocation of a three-judge District Court. The plaintiffs prayed for a temporary and permanent injunction against the operation, enforcement or execution of House Rule XI and against the future prosecution of the plaintiffs for contempt of Congress under 2 U.S.C. § 192.

House Rule XI provides, in pertinent part:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The complaint alleged that this Rule is illegal and void as applied to the plaintiffs, and as utilized by the defendants and their predecessors in the past, in that it violates the First, Fifth, Ninth and Tenth Amendments to the United States Constitution.

Without reaching the question of the substantiality of the constitutional issues, the District Court denied the application for a three-judge Court and dismissed the complaint for lack of justiciable controversy. The Court found that the plaintiffs lacked standing to raise the constitutional challenge to House Rule XI since they were not in the direct focus of the Rule. The Court concluded that the criminal prosecution feared by the plaintiffs was not possible until the full House of Representatives considered the facts and the Speaker of the House certified the facts

to the United States Attorney and directed him to bring the matter of contempt before the grand jury. 2 U.S.C. § 194. The District Court also noticed that criminal prosecution could be instituted only by the United States which was not a party to the action.

Appeals from the decisions of the District Court in both actions were taken to the Court of Appeals for the Seventh Circuit. The reviewing court reversed upon concluding that in deciding the question of justiciability in the second action the District Court had improperly considered the merits of the plaintiffs' claim and that both complaints presented a substantial constitutional question. *Stamler* v. *Willis*, 371 F.2d 413 (7th Cir. 1966). The Court stated:

> "The complaints alleged generally that the interpretation of section 18 of Rule XI as expressed by the continued conduct of the Subcommittee of the House Un-American Activities Committee attributes a meaning to the rule which renders it unconstitutional, and that this conduct consisted of the exposure of witnesses, including plaintiffs, to public scorn and obloquy and harassment and intimidation of these witnesses without any legislative purpose but rather to chill and deter them and others in the exercise of their first amendment rights.
>
> "These allegations raise a substantial constitutional question not foreclosed by the Supreme Court in *Barenblatt* v. *United States*, 360 U.S. 109 (1959)." 371 F.2d at 414.

The Court also noted that the complaints alleged, at least formally, a basis for equitable relief and that the requirements of the three-judge statute had been met. The cases were remanded to the District Court with directions to grant the requests for a three-judge Court

After remand, the three-judge District Court was appointed and the cases were consolidated for trial. During the summer of 1967 the plaintiffs moved for a temporary restraining order preventing the defendants from seeking to secure indictments against them for violations of 2 U.S.C. § 192. The motion was presented to the single District Judge who was advised that the previous fall the Speaker of the House of Representatives had certified facts constituting the alleged illegal conduct of the plaintiffs to the United States Attorney and that the Attorney General and the United States Attorney were going to present the alleged contempt charges to the grand jury. While this motion was under advisement, the plaintiffs moved for leave to file a First Supplement to the Complaints indicating the action taken by the House of Representatives and for leave to add the United States Attorney and the Attorney General as parties defendant. Leave to file the Supplement was granted but the motion to add additional parties was denied. Thereafter the single Judge denied the motion for a restraining order and the plaintiffs were indicted for contempt of Congress in violation of 2 U.S.C. § 192. The initiation of the criminal prosecutions was pleaded in a Second Supplement to the Complaints and the plaintiffs prayed for an injunction against the prosecutions. Leave to file the Second Supplement and to add the Attorney General and the United States Attorney as parties defendant was allowed. The criminal actions are pending.

The Congressional defendants moved to dismiss the complaints as supplemented and that motion was denied. All the defendants then answered and filed a motion for summary judgment and several discovery motions which were taken under advisement. Next the Congressional defendants moved to stay discovery and to dismiss the actions

for lack of jurisdiction on the ground that they are immune from suit under the Speech or Debate Clause, United States Constitution, Article 1, § 6, Clause 1. All nine Congressional defendants filed Claims of Privilege and Exemption from Suit. The cases are now before the Court for decision on the motion of all defendants for summary judgment, two discovery motions and the Congressional defendants' motion to stay discovery and dismiss the complaints.

The issue raised by the pending motion to dismiss the actions as to the Congressional defendants is the availability to them of the immunity granted legislators under the Speech or Debate Clause. That Clause provides: "[F]or any Speech or Debate in either House [the members of Congress] shall not be questioned in any other place." The defendants urge their claimed immunity as a jurisdictional impediment to the present actions which seek injunctive relief against them based on alleged legitimate legislative activities. Reliance is placed on the opinion of Judge Burger in *Powell* v. *McCormack*, ... F.2d ..... (D.C. Cir. Feb. 28, 1968). In that case the plaintiff, Member-Elect Adam Clayton Powell, Jr., brought suit against several members of the 90th Congress to restrain the enforcement, operation or execution of House Resolution No. 278 whereby Member-Elect Powell was excluded from membership in the 90th Congress, and to restrain the defendants and the full House of Representatives from taking any action to enforce House Resolution No. 278. Judge Burger reached the conclusion that the Speech or Debate Clause operated as a bar to the maintenance of Mr. Powell's suit.

The Speech or Debate Clause has been the subject of only four Supreme Court decisions: *Kilbourn* v. *Thompson*, 103 U.S. 168 (1880); *Tenney* v. *Brandhove*, 341 U.S. 367

(1951); *United States* v. *Johnson*, 383 U.S. 169 (1966); and *Dombrowski* v. *Eastland*, 387 U.S. 82 (1967). These cases teach that the Clause confers personal immunity on members of Congress to protect the legislative process in our system of government, and that the Clause must be read broadly to effectuate its purposes. Under these cases Congressmen are insulated from criminal sanction and civil liability if they are engaged in legitimate legislative activity such as the conduct of Congressional committee hearings. However, the Supreme Court has not decided the questions raised by the present motion to dismiss. Those questions are whether the legislative immunity provided by the Speech or Debate Clause may be asserted in an action seeking only equitable relief and a declaratory judgment, and in an action brought to redress a deprivation of First Amendment rights.

The nature of the remedy sought by a litigant does not determine whether the legislator engaged in legitimate legislative activity shall be called to answer before the Judiciary. The Clause must operate to prevent intimidation by the executive and accountability before a possibly hostile judiciary. *United States* v. *Johnson, supra,* at 181. The doctrine of immunity should protect the legislator not only from the consequences of the results of the litigation, but also from the burden of defending himself. *Dombrowski* v. *Eastland, supra* at 85. The Clause itself is the only constitutional provision wherein the doctrine of separation of powers is explicit and its history indicates that any matter concerning either House of Congress should be examined and adjudged in the House to which it relates, and not elsewhere. The precedents, the history of the provision and the required broad reading of the Clause dictate the

conclusion that the kind of relief prayed against the legislator has no effect on the availability of the defense of immunity.

The conflict between First Amendment rights and legislative action was examined in *Bond* v. *Floyd,* 385 U.S. 116 (1966). In that case the question was whether a state House of Representatives could constitutionally exclude a duly elected Representative from membership because of his statements criticizing the policy of the Federal Government. The Court found that the disqualification of the plaintiff Bond from the Georgia House of Representatives violated the plaintiff's right of free expression under the First Amendment. The basis of the Court's decision was the First Amendment requirement that legislators be given the widest latitude to express their views on issues of policy. However, the defendants did not raise the issue of legislative immunity under the equivalent of the Speech or Debate Clause in the Georgia Constitution and the Court did not consider the collision of the plaintiff's First Amendment rights as a legislator and the defendants' similar rights under a specific constitutional provision.

In the cases at bar, we are confronted with an asserted deprivation of First Amendment rights and the constitutional doctrine of legislative immunity. We find that the freedom of expression protected by the Speech or Debate Clause outweighs the similar protection of the First Amendment. The mandate of the Speech or Debate Clause is explicit: A member of Congress shall not be required to answer in the courts for any speech within the scope of his legislative activity. If that speech impinges upon another's First Amendment rights, the former must prevail. The balance of the rights pleaded by the parties favors the Congressional defendants.

The more vital question presented by the motion to dismiss is whether the Congressional defendants were engaged in legitimate legislative activity. The Congressional defendants have been charged with "pillorying" the plaintiffs and other witnesses who have appeared before the Committee, exposing them to public scorn and obloquy, harassment and intimidation with the purpose of deterring them and others in the exercise of their First Amendment rights. Further the plaintiffs complain that the continued conduct of the Committee members attributes a meaning to House Rule XI which renders it unconstitutional.

Essentially the plaintiffs challenge the motive of the defendants. The Court cannot act on this challenge and probe the motivation of the individual legislator; "[t]he claim of an unworthy purpose does not destroy the [Speech or Debate] privilege." *Tenney* v. *Brandhove, supra* at 377. Rather, in determining whether the defendants were engaged in legitimate legislative activity, the Court should only determine whether the Committee's inquiry may fairly be deemed within its province. The Supreme Court has held:

> "Investigations, whether by standing or special committees, are an established part of representative government. Legislative committees have been charged with losing sight of their duty of disinterestedness. In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province. To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that

there was a usurpation of functions exclusively vested in the Judiciary or the Executive." *Tenney* v. *Brandhove, supra,* at 377-378.

We reach the conclusion that the Chicago hearings conducted by the defendants may fairly be deemed within the province of the Committee. The transcripts of the hearings are attached as exhibits to the complaint filed in the second action and the defendants have filed, in support of the motion for summary judgment, copies of the House reports certifying the facts leading to the Committee request that the plaintiffs herein be cited for contempt and including the underlying resolution and authority of the subcommittee to hold the Chicago hearings, and the background of the witnesses on which was based the Committee decision to subpoena them. These exhibits do not disprove the plaintiffs' allegations that the conduct of the Committee gives an unconstitutional gloss to House Rule XI, but they establish that the Chicago hearings may fairly be deemed to be within the province of the Committee. The questions are not the same. We conclude that the hearings conducted by the defendants constituted legitimate legislative activity.

The defendants raise the immunity under the Speech or Debate provision as a bar to this Court's jurisdiction. Although Judge Burger's opinion supports this view, we disagree and note that the issue has not been decided by the Supreme Court. In order for the Speech or Debate Clause to protect a legislator, it must be demonstrated that he is engaged in legitimate legislative activity. The determination of such a question is more appropriate in a summary judgment setting. Therefore, we have treated the Claims of Privilege and Exemption from Suit as affirmative defenses to the actions and find, on the defendants'

motion for summary judgment, that the Speech or Debate Clause is a complete legal defense to both actions. In view of the fact that these cases were commenced more than three years ago, the Court will not require amended pleadings or new motions for summary judgment presenting the defense of immunity to the Court. We will treat the motion of the Congressional defendants to stay discovery and dismiss the actions under the pending motion for summary judgment and allow both motions of the Congressional defendants. The relief sought against the Attorney General and the United States Attorney is ancillary to the claims against the Congressional defendants and the actions will be dismissed as to the Attorney General and the United States Attorney. The remaining motions will be denied as moot.

/s/ *Julius J. Hoffman*
United States District Judge
/s/ *Alexander J. Napoli*
United States District Judge

Dated: June 26, 1968

CUMMINGS, *Circuit Judge,* dissenting. The majority rests its decision on the Speech or Debate Clause contained in Article I, Section 6, Clause 1 of the Constitution, providing "The Senators and Representatives * * * for any Speech, Debate in either House * * * shall not be questioned in any other Place."[1] This clause is derived from the 1689 English Bill of Rights providing:

> "That the freedom of Speech and Debate or proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament."

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[1] By not raising this privilege or immunity in their Answer, which raised nine affirmative defenses, the Congressional defendants have waived it. But since the majority has seen fit to pass upon the merits of this defense, it will also be considered in this dissent.

This privilege was chiefly intended to protect members of Parliament from criminal charges and libel or slander actions. See *United States* v. *Johnson,* 383 U.S. 169, 182; *The Bribed Congressman's Immunity from Prosecution,* 75 Yale L.J. 335, 341-342 (1965).

In this country, a similar clause in the Massachusetts Constitution of 1780 was first construed in *Coffin* v. *Coffin,* 4 Mass. 1, 27 (1808), a slander suit, as enabling members of the legislature "to execute the functions of their office without fear of prosecutions, civil or criminal." At two other places in his opinion, Chief Justice Parsons refers to freedom from "prosecutions." Of course, prosecutions are not involved in the present suit for injunctive and declaratory relief.

The Supreme Court's first consideration of the Speech and Debate Clause came in *Kilbourn* v. *Thompson,* 103 U.S. 169, where it was deemed to give members of a congressional committee a defense against a suit for damages brought by a person imprisoned for failure to answer certain committee questions and to produce books and papers sought by the committee. In *Kilbourn,* the Court refused to limit this constitutional provision to words spoken in debate, but nevertheless confined its decision to "what is necessary to the case at hand," stating:

> "It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible." See 103 U.S. pp. 204-205.

The next Supreme Court consideration of this clause came in another suit where the plaintiff sought damages from members of a legislature. *Tenney* v. *Brandhove,* 341 U.S. 367. There Justice Frankfurter concluded that the

clause applied to immunize legislators from such actions if "from the pleadings it appears that the defendants were acting in the sphere of legitimate legislative activity" (at p. 376). After stating that the purpose of the clause was to free members of the legislatures from "criminal and civil liability," the *Tenney* opinion adhered to the caveat expressed in the *Kilbourn* case that members of the legislature might be held responsible for doing things "of an extraordinary character" (at pp. 375, 378).

The Supreme Court again considered this clause in *United States* v. *Johnson,* 383 U.S. 169, where it was applied to bar a criminal prosecution against a former congressman. Again the Court was careful to limit its holding to the circumstances presented (at p. 185).

The last Supreme Court consideration of this clause occurred in the *per curiam* opinion in *Dombrowski* v. *Eastland,* 387 U.S. 82, another damage action. The Court reiterated the *Tenney* concept that legislators should be protected from the burden of defending themselves when engaged "in the sphere of legitimate legislative activity" (p. 85). In contrast, here the Congressional defendants are being fully defended by the Government, as provided by 2 U.S.C. § 118, with no possibility of monetary liability.

This review of the leading authorities construing the Speech or Debate Clause shows that until today no court has applied it to an action seeking injunctive or declaratory relief. It is true that in *Powell* v. *McCormack,* ..... F.2d ..... (D.C. Cir. 1968), Judge Burger concluded that the clause applied to an action seeking equitable relief, but neither Judge McGowan nor Judge Leventhal agreed with him, and they reached certain aspects of the merits of the *Powell* complaint.

In my view, the immunity extended by the Speech or Debate Clause is limited to judicial proceedings in which individual legislators are sought to be rendered personally liable, civilly or criminally, for activities stemming from a privileged range of conduct. The immunity does not extend to actions for declaratory and injunctive relief in which, as here, Congressmen are only parties in their official capacity.

As explained in *United States* v. *Johnson, supra,* p. 180, the state legislators' privilege is on a parity with the federal privilege arising from the Speech or Debate Clause. In fact, at least 43 states have constitutional provisions equivalent to that clause. (See *Tenney* v. *Brandhove, supra,* at p. 375, note 1; 1 Alaska Stats. p. 231; Rev. Laws of Hawaii, 1963 Supp. p. 11.) Despite such state constitutional provisions, injunctive relief has often been accorded against members of state legislatures, showing that injunctive relief is also not barred by the Speech or Debate Clause of the federal Constitution. Thus in *Dombrowski* v. *Pfister,* 380 U.S. 479, it was held that the plaintiffs were entitled to declaratory and injunctive relief against the chairman of a joint committee of the legislature and others. A few years later, in *Bond* v. *Floyd,* 385 U.S. 116, the Court again held that a plaintiff was entitled to declaratory and injunctive relief against members of a state legislature even though the Supreme Court of Georgia had interpreted its Speech or Debate Clause as barring actions for declaratory relief against legislators. *Village of North Atlanta* v. *Cook,* 219 Ga. 316, 133 S.E.2d 585 (1963). The rationale of the *Dombrowski* and *Bond* decisions applies equally to members of the United States House of Representatives.

Similarly, in *Liveright* v. *Joint Committee,* 279 F.Supp. 215 (M.D. Tenn. 1968), an injunction was entered against members of a joint committee of the Tennessee Assembly and other members of the legislature, restraining them from proceeding under a vague and overbroad resolution (narrower than Rule XI) authorizing the investigation of the Highlander Research Center of Knox County. To like effect, see *Bush* v. *Orleans Parish School Board,* 191 F.Supp. 871 (E.D. La. 1961), affirmed, 367 U.S. 908; *Jordan* v. *Hutcheson,* 323 F.2d 597, 601-602 (4th Cir. 1963).

Thus in the foregoing cases, the Supreme Court and other federal courts have approved declaratory and injunctive relief against legislators. The instant decision is the first known Speech or Debate Clause ruling to the contrary.

Under the allegations of this complaint, the House Committee on Un-American Activities has engaged in a consistent course of conduct whose effect is to stifle freedom of association and criticism of the government.[2] The Speech or Debate Clause was designed to encourage just such criticism. Its prophylactic purpose reflected "the central importance to our political system of uninhibited political expression as guaranteed to the general populace by the First and Fourteenth Amendments." *United States* v. *Johnson, supra,* at p. 182, note 12. Its purpose should not be subverted by employing it to deny relief to these plaintiffs. This is especially true when the clause has never before been applied to actions for injunctive or declaratory relief in the nearly 180 years of its operation. In fact, the

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[2] Unlike *Tenney* v. *Brandhove, supra,* the motives of these Congressional defendants are nowhere challenged. It is the effect of their conduct that is at issue here, not their motives.

novelty of the Government's position is shown by its not having raised this clause during the first two and one-half years this case has been pending!

Even assuming *arguendo* the correctness of Judge Burger's views in *Powell* v. *McCormack,* that case is not controlling here. There the relief sought would force the seating of Congressman-Elect Powell, whereas if these plaintiffs should prevail on the merits, Congress could enact a narrower enabling Act and continue its investigations thereunder. In *Powell,* the plaintiff had no alternative way of presenting his constitutional claim in a judicial proceeding, whereas here the majority opinion admits that these plaintiffs' constitutional claims can be entertained in their criminal trials. If they should prevail on this point in those trials, the result would in effect be a judicial decision that Rule XI is unconstitutionally broad, the very result sought here. An unfavorable decision here would signify no less respect for a coordinate branch of the Government than would a like decision in the criminal prosecutions. The fact that plaintiffs can test the issues presented here in their criminal prosecutions is no reason to deny them standing in this proceeding. *Flast* v. *Cohen,* 36 U.S. Law Week 4601. As Judge Medina observed in *Wolff* v. *Selective Service Local Board No. 16,* 372 F.2d 817, 824-825 (2d Cir. 1967):

> "Where basic constitutional rights are imperiled, the courts have not required a series of injured parties to litigate the permissible scope of the statute or administrative interpretation but have nullified the unconstitutional action and required the Government to start in the first instance with a statute or interpretation that will not so overhang free expression that the legitimate exercise of constitutionally protected rights is suppressed."

There *Dombrowski* v. *Pfister, supra,* was applied to prevent federal interference with First Amendment rights (at p. 824).

In sum, the Speech or Debate Clause protects legislators from imprisonment or money judgments that would adversely affect their ability to perform their Congressional duties. But if these plaintiffs were to prevail in this case, the defendant members of Congress would not be impeded in their Congressional functions but merely have to conduct their future investigations under a narrower, constitutional mandate. Thus permitting this action to proceed will have no chilling effect on the legislators' performance of their duties. Cf. Note, 78 Harv. L. Rev. 1473, 1475 (1965).

The Court of Appeals for this Circuit has previously recognized the different impact of damages and injunctive actions, stating as follows in *Adams* v. *City of Park Ridge,* 293 F.2d 585, 587 (7th Cir. 1961):

> " * * * the case at bar is not an action for damages for torts committed. It looks to the future only and asks for a declaratory judgment and an injunction against invasions of plaintiffs' federal constitutional rights contemplated by a municipality's ordinance. None of the reasons which supports a city's immunity from an action for damages for tortious injuries already inflicted by its officers, agents or servants applies to this case. No reason is apparent why a city and its officials should not be restrained from prospectively violating plaintiffs' constitutional rights pursuant to its own legislative enactment, and an injunction not be granted as provided in §1983."

Similarly here, the reasons supporting Congressional immunity in criminal prosecutions or in damage actions do not apply to this case. Cf. *Flast* v. *Cohen,* 36 U.S. Law Week 4601, 4610, n. 6 (concurring opinion).

By belated resort to the Speech or Debate Clause, this Court should not evade the mandate of *Stamler* v. *Willis*, 371 F.2d 413 (7th Cir. 1966), holding that this complaint presents a substantial constitutional question, and that the breadth of Rule XI should be measured against this Committee's conduct over the years. Cf. *Watkins* v. *United States*, 354 U.S. 178, 198, 202; *Gojack* v. *United States*, 384 U.S. 702, 711-712. The *Stamler* opinion contemplated that this judicial re-examination was to occur in this proceeding rather than in subsequent criminal proceedings. By settling the questions raised by this complaint in this civil proceeding, future interference with Committee activity would be eliminated. Unlike the now pending criminal prosecutions, more suitable discovery procedures and more liberal rules of evidence are available here to throw light on the serious constitutional questions presented. These questions are surely weighty enough to call for adjudication by three judges rather than a single judge hearing the criminal cases. Moreover, direct Supreme Court resolution is available upon appeal from the judgment on the merits by this 3-judge court. See *Zemel* v. *Rusk*, 381 U.S. 1, 5-7. Defendants have not shown why defense of this proceeding would be significantly more burdensome than would their cooperation in the prosecution of these plaintiffs under 2 U.S.C. § 192.

These plaintiffs, like those in *Dombrowski* v. *Pfister*, 380 U.S. 479, should be permitted to raise these questions in a civil proceeding not inhibiting the full exercise of their First Amendment rights. They should not have to go through years of criminal litigation as in *Gojack* v. *United States*, 384 U.S. 702, where the defendant had to stand trial twice, was convicted twice, appealed unsuccessfully twice, obtained a new trial from the Supreme Court and finally the dismissal of charges against him in the Supreme Court.

Even more than in *Dombrowski* v. *Pfister, supra,* these plaintiffs are entitled to an adjudication of their civil complaint. There the allegedly overbroad statute was new and had not been judicially construed, so that any threat to free expression might have been obviated *ad limine.* Here it is alleged that the interpretation put on Rule XI during the approximately 30 years of the Committee's existence exacerbates the overbreadth of the Rule, and it has already been held that plaintiffs' allegations raise a substantial constitutional question (*Stamler* v. *Willis, supra).* Therefore, *Dombrowski* surely requires this Court to permit this civil litigation to proceed.

In denying the Government's motion to dismiss, this Court has already determined that plaintiffs' claims should be considered on their merits even though a coordinate branch of the Government is involved. The judiciary has always borne the basic responsibility for protecting individuals against unconstitutional invasions of their rights by all branches of the Government.[3] Thus the Supreme Court has overturned a major policy decision of the President because he exceeded his powers in seizing the steel mills. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579. More recently, the Court has ruled that an Act of Congress designed to prevent members of the Communist Party from holding jobs in defense facilities, and action taken pursuant to that Act by the Secretary of Defense, was unconstitutional because it placed a greater restraint on First Amendment freedoms than was necessary to guard against espionage and sabotage. *United States* v. *Robel,* 389 U.S. 258. Although the Speech or Debate Clause protects individual legislators against personal liability for

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[3] See *Legislative Exclusion: Julian Bond and Adam Clayton Powell,* 35 Univ. of Chi. L. Rev. 151, 164-166 (1967).

their legislative acts, it cannot foreclose judicial inquiry into the constitutionality of the Committee of which they are members. The Congress has no more right, whether through legislation or investigations conducted under an overbroad enabling Act, to abridge the First Amendment freedoms of the people than do the other branches of government, "For free expression — of transcendent value to all society, and not merely to those exercising their rights — might be the loser." *Dombrowski* v. *Pfister, supra,* at p. 486.

As shown in the *Tenney* case, and reiterated in *Dombrowski* v. *Eastland, supra,* the Speech or Debate Clause was meant to apply to legislators engaged in the sphere of legitimate legislative activity. In *Stamler* v. *Willis*, 371 F.2d 413 (7th Cir. 1966), the Court decided there was a substantial question whether these legislators were so engaged. In that vein, this Court has already unanimously denied the Government's motion to dismiss and permitted limited discovery and should not now back-track from the forthright position previously taken merely to avoid passing upon the difficult and weighty questions presented.

The majority states that the action against the Attorney General and the United States Attorney must fall with the action against the Congressional defendants because the actions against the former are "ancillary." But as early as *Stockdale* v. *Hansard,* 9 Ad. & El. 1 (1839), and certainly by the time of *Kilbourn* v. *Thompson, supra,* it was clearly established that liability, including personal tort liability, could be imposed on an official for following orders given to him by the Congress, even though the Congressmen could not be held. This is exactly what

happened to the Sergeant-at-Arms of the House in *Kilbourn*. The principle was recently reaffirmed in *Dombrowski* v. *Eastland*, 387 U.S. 82, where the Supreme Court ordered that a tort action go to trial as against Senate Subcommittee Counsel Sourwine, while at the same time dismissing the action as against Senator Eastland. There is therefore no legal bar to the continuation of this action as against defendants Clark and Foran. I would hold that this action should proceed against the Congressional defendants as well.

For these reasons, I am unable to join in the judgment order being entered.

/s/ *Walter J. Cummings*
United States Circuit Judge

Dated: June 26, 1968

APPENDIX 2

Judgment entered June 26, 1968.

These consolidated causes coming on to be heard on the plaintiffs' and the intervening plaintiff's Complaints and First and Second Supplements thereto, the Answers of the defendants, the motion of all defendants for summary judgment, and the following motions of the Congressional defendants: (1) Motion to stay discovery and dismiss the causes; (2) Motion to exclude certain defendants from discovery orders; and (3) Motion to bar the plaintiffs from deposing Committee employee McNamara and for a protective order to cover the depositions of Committee employees Wetterman and Sweeney; and the Court, consisting of three Judges convened pursuant to law, having considered the pleadings and motions of the parties, the briefs of counsel, the materials submitted in support of the motion for summary judgment and the Claims of Privilege and Exemption from Suit filed by the Congressional defendants as exhibits to their motion to stay discovery and dismiss the causes; and the Court having this day filed its Memorandum of Decision, and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the motion of the Congressional defendants to stay discovery and dismiss the causes be considered in conjunction with the defendants' motion for summary judgment;

2. That the motion of the Congressional defendants for summary judgment and the motion of the Congressional defendants to stay discovery and dismiss the consolidated causes be and the same hereby are allowed;

3. That the consolidated causes be and the same are hereby dismissed as to the remaining defendants;

4. That all other motions pending presently before the court be and the same are hereby denied as moot;

5. That the consolidated causes be and the same hereby are dismissed.

ENTER:

/s/ *Julius J. Hoffman*
United States District Judge

/s/ *Alexander J. Napoli*
United States District Judge

DATED: June 26, 1968

APPENDIX 3

Opinion of Court of Appeals for Seventh Circuit in Stamler v. Willis, 371 F.2d 413 (7th Cir. 1966).

Before KNOCH, KILEY and CUMMINGS, *Circuit Judges.*

KILEY, *Circuit Judge.* Plaintiffs appeal from a judgment of the district court denying their motion for a three-judge court[1] and dismissing their complaints. We order the judgment vacated.[2]

Since this court has no greater jurisdiction in this case than the single district judge, the sole question is whether the complaints presented a substantial constitutional question so as to deprive the district court of jurisdiction to dismiss the complaints.

The district court did not reach this question, but dismissed on the basis of rulings on "threshold questions" as to the propriety of a decision on the merits. But in our view, the district court, in reaching its conclusions on the "threshold questions," relied in part upon the decisions on the merits of the case presented and in doing so exceeded the single-judge preliminary inquiry jurisdiction. We think that if the complaints present a substantial con-

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[1] 28 U.S.C. § 2282 (1964):

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title.

[2] Since the issues raised by the first complaints, filed the day before the hearings, are substantially the same as those raised by the second complaints, we need discuss only the second.

stitutional question, the three-judge court request ought to be granted, since there is no doubt that the complaints "at least formally allege a basis for equitable relief . . ." and that "the case presented otherwise comes within the requirements of the three-judge statute."[3] *Idlewild Bon Voyage Liquor Corp.* v. *Epstein,* 370 U.S. 713, 715 (1962).

The complaints alleged generally that the interpretation of section 18 of Rule XI[4] as expressed by the continued conduct of the Subcommittee of the House Un-American Activities Committee attributes a meaning to the rule which renders it unconstitutional, and that this conduct consisted of the exposure of witnesses, including plaintiffs, to public scorn and obloquy and harassment and intimidation of these witnesses without any legislative purpose but rather to chill and deter them and others in the exercise of their first amendment rights.

These allegations raise a substantial constitutional question not foreclosed by the Supreme Court in *Barenblatt* v. *United States,* 360 U.S. 109 (1959).

In *Barenblatt* the Court rejected the contention that Rule XI was unconstitutionally vague in delineating the limits of Subcommittee inquiry when judged, as it must be, in the concrete. The Court held that the Committee's history and the "persuasive gloss of legislative history"

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[3] There is no doubt that a single district judge, where a three-judge court is requested, may consider the question of his own jurisdiction in an appropriate case. *E.g., Lion Mfg. Corp.* v. *Kennedy,* 330 F.2d 833 (D.C. Cir. 1964).

[4] Legislative Reorganization Act of 1946, 60 Stat. 812, 818, as adopted by the Eighty-Ninth Congress. H.R. 8, 89th Cong., 1st Sess., 111 CONG. REC. 21 (1965).

disclosed authority, unassailable on grounds of vagueness to investigate Communist influence in education. 360 U.S. at 122. On the issue of violation of first amendment rights, the Court said "there is no indication in this record that the Subcommittee was attempting to pillory witnesses." 360 U.S. at 134. Here it is alleged that Rule XI, section 18, is unconstitutional as continually interpreted by the Subcommittee to justify the effectual "pillorying" of plaintiffs and other witnesses.[5] We think the Court's language in *Gojack* v. *United States*, 384 U.S. 702 (1966), supports our conclusion that the complaints raise a question not foreclosed by *Barenblatt*: "*In the circumstances of that case* [*Barenblatt*], the Court sustained the constitutionality of the investigation. . . ." (Emphasis added.) *Id.* at 706. We hold that a substantial constitutional question was presented and that the district court had no jurisdiction to dismiss the complaints.

The cause is remanded with directions to vacate the judgment and to grant the request for a three-judge court.

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[5] Because of the allegations here of the Subcommittee conduct giving an unconstitutional meaning to the statute, this case is distinguished from those where unconstitutional conduct under color of a valid statute is alleged. *Ex parte Bransford*, 310 U.S. 354 (1940). It is well established that the meaning of a statute must not be derived solely from its abstract terms, "unrelated to the definite content furnished them by the course of congressional actions." *Barenblatt* v. *United States*, 360 U.S. 109, 117 (1959).

KNOCH, *Circuit Judge.* (dissenting) Reluctantly I find myself in disagreement with my colleagues. It seems to me that the District Judge properly considered the threshold questions of standing to sue and the propriety of the remedies sought. As indicated in his original ruling involved in appeals Nos. 15268 and 15269, he was of the opinion that a substantial constitutional question had not been presented at that time. Similarly, there is an indication that he was still of that opinion in deciding the later petitions involved in appeals Nos. 15668 and 15669, although he disposed of the matters on the announced threshold grounds. I believe that his actions were correct and his disposition of the matter should be affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,
Plaintiffs-Appellants,

and

MILTON M. COHEN,
Intervening Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

APPENDICES 4 AND 5 TO JURISDICTIONAL STATEMENT

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In the
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APPENDIX 4
JURISDICTIONAL STATEMENT

Introduction

This appendix is a selection of examples of Committee conduct and its impact upon citizens, taken from Committee hearings and reports, the Congressional Record and various newspapers and magazines. Neither time nor space permit the inclusion of all instances of the conduct illustrated below.

For the convenience of the Court, each hearing is referred to by a hearing number assigned according to the chronological list of hearings at the end of this appendix. ("H. ....., p. .....")

COMMITTEE WITNESSES

The Committee is aware of the testimony to be given by its own witnesses.

The 1965 Chicago hearings followed a customary pattern of public hearings in which Committee witnesses are called to identify as Communists or ex-Communists other persons who later appear in the same hearing pursuant to subpoena. The Committee frequently acknowledges that these so-called "friendly" witnesses have already given the information about which they testify, either in executive session or in a consultation with the Committee's staff. For example:

Washington D.C., 1966

"Mr. Nittle: At this point, Mr. Chairman, I would like to state for the record, and for the benefit of the committee, that the testimony that Mr. Luce is giving here today regarding Dr. Krebs was initially received in executive session and, after this testimony was received, we have notified, as I have just stated, Dr. Krebs to give him the opportunity to come in in private session, prior to the hearing today, to state whatever he had to say." (H. 170, p. 956.)

Minneapolis, 1964

"The Chairman: And you knew . . . [Meridel LeSueur and another] to be members of the Communist Party?

"Mr. Boehnke: Not Meridel LeSueur, I cannot positively identify her. . . ."

* * *

"Mr. Nittle: Mr. Boehnke, I would like to clarify your testimony with respect to Meridel LeSueur. In executive session before this committee on May 13, 1964, you testified in response to questions posed to you by me as follows:

" 'Question: Now, do you identify Meridel LeSueur as a member of the Communist Party?'

"And you replied, 'Yes.' I then asked:

" 'Question: And how do you make that identification?' . . ." (H. 163, pp. 1772, 1776.)

New York, 1957

"Mr. Solomon: When Mrs. Scotti [identified as a Committee investigator at p. 611 of the hearing] first gave me the name, I was sure I recognized it." (H. 111, p. 885.)

Pittsburgh, 1959

"Mr. Arens: Mr. Chairman, as the Chairman knows and as the witnesses of course know, these witnesses have been in contact with the staff over the course of many months. We have had, under oath, extensive interviews and consultations with these two witnesses on some subjects covered here today, but there are other matters which, as the Chairman knows, it would not be prudent at this time to develop with these witnesses in a public session." (H. 125, p. 344.)

For other references to meetings between the Committee staff and witnesses, see H. 16, pp. 282, 346; Pittsburgh Press, Feb. 21, 1950 (three day secret session with friendly witness); H. 111, pp. 636, 826; H. 117, pp. 1605, 1618; H. 121, p. 2092; H. 139, p. 1773; Ex. 50, p. 357 (Exec. session); H. 114, p. 895.

(See also H. 121, p. 2278; H. 114, pp. 1025-31; H. 115, pp. 1218-19; H. 105, p. 5610; H. 82, pp. 5097-98, 5181, 5301; H. 77, pp. 3218-38; H. 61, p. 4304.)

Many Committee witnesses (such as the two friendly witnesses who testified at the Chicago hearings in May, 1965) were paid undercover agents of the Federal Bureau of Investigation who have reported regularly to their superiors. (H. 105, pp. 5612, 5666; H. 82, p. 5562.)

Repeated use of Committee witnesses.

Many of the Committee's witnesses have been called to testify before the Committee repeatedly, often in different parts of the country.

Elizabeth Bentley testified in public session three times. (H. 19, pp. 503-62, 604, 725, 810; H. 18, pp. 1849-64; H. 51, pp. 2205-08.)

Matthew Cvetic testified in public session four times. (H. 34, pp. 1195-1352, 2365-68, 2365-72, 3007-72, 3143-67.)

John Lautner testified in public session on ten separate occasions between the 84th and 86th Congresses. (H. 107, pp. 6178, 6188, 6225-33, 6240, 6338-39; H. 111, pp. 650-51, 800; H. 120, pp. 1958-73; H. 113, pp. 2493-95, 2510-14.)

Barbara Hartle testified in public session four times between 1954 and 1960. (H. 107, pp. 6943, 6946-50, 6952-58, 7052, 7060; H. 137, pp. 1956-65, 1969-82, 2003-04; H. 59, pp. 6055-6125, 6127-33, 6629-50.)

In four days of testimony, *Mrs. Mildred Blauvelt,* a "red squad" agent of the New York City Police Force, supplied the Committee with the names and, in most cases, the addresses of 450 people. (H. 68, pp. 820-89.) She gave further testimony along the same lines in public session in the 1955 Los Angeles hearings. (H. 134, pp. 1526-37, 1668-76.)

Charles Regan testified in public session at least twice. (H. 101, p. 1560; H. 117, pp. 1604-30.)

Armando Penha testified in public session five times in the same year. H. 121, pp. 2090-2133, 2151-52, 2268-81, 2371-72, 2388-2403; H. 124, pp. 2609-28, 2693.)

Berenice Baldwin testified in public session in three hearings. (H. 55, pp. 2926-58; H. 69, pp. 1829-36; H. 82, pp. 5297-5328.)

The Committee's most frequent witness has been *Irving Fishman,* a customs agent who generally

brought with him a mail sack full of propaganda originating outside the United States. Over a five year period he testified in public session twelve times in ten cities. Each time his testimony was substantially the same. (H. 101, pp. 4694, 4718, 5422-37, 6044-68, 251-68, 1534-46, 2426-42; H. 121, pp. 2174-90; H. 122, pp. 2635-42; H. 123, pp. 2788-805; H. 134, pp. 1618-35; H. 137, pp. 1934-51.)

Listing of names by Committee witnesses.

Reading of the transcripts of the Committee's hearings reveals that a major portion of the public testimony of friendly witnesses serves to place in the public record the names of those persons whom the Committee has determined are "subversive" or "un-American." Names are listed with the sketchiest of descriptions. The Committee rarely inquires into the witness' knowledge of activities on the part of the persons named.

The testimony of Lola Belle Holmes at the hearing to which plaintiffs were subpoenaed is a typical example of listing alleged members of the Communist party. (Exhibit 50, pp. 351, 354, 357-60, 366, 368, 370, 373, 378-82). At one point, Miss Holmes discussed the 1959 Illinois state convention of the Communist Party (pp. 357-59):

> "Mr. Nittle: Miss Holmes, you have given us an exhibit, which you have identified as Holmes Exhibit No. 2, entitled 'convention preparations.' These various committees are named thereon and the persons who have been appointed to them. You received this from the State officials of the Party?
>
> * * *
>
> "Miss Holmes: Yes. . . .
>
> "Mr. Nittle: Now, do not the persons about whom I have questioned you appear named thereon as members of the resolutions committee, the convention arrangements committee, constitution and by-laws committee, and the publicity committee?

"Miss Holmes: They are here and I have seen them before and I know them very well. I just could not remember their names from years gone by.

* * *

"Mr. Nittle: Now in order to assist your memory and to expedite the hearing, you have furnished the Committee with the names of those persons whom you recollect as being in attendance at the State convention, is that right?

"Miss Holmes: Yes.

"Mr. Nittle: Now you have before you a list, prepared by you, which identifies some of those who were in attendance; is that correct?

"Miss Holmes: Yes I have.

"Mr. Nittle: Now, will you tell the Committee, please, whether you know those persons who were in attendance at the State convention?

"Miss Holmes: I know all of them very well: Ben Friedlander, Mollie Gold, David Englestein—

"The Chairman: Start reading the list and go slow so that the reporter can get it.

* * *

"Miss Holmes: Mollie Gold, David Englestein, Fritzi Englestein, Dorothy Davies, James West, Mollie West, Samuel Kushner—

". . . Milton Cohen, L. Kimmel—

". . . Otto Wangerin as observer; Marcia Starr—

". . . Charles Sotis, Romolo Passarelli—

" . . . Flora Hall, Lou Diskin, Geraldine Lightfoot, Claude Lightfoot, Lester Wickstrom, Esther Eisenscher Wickstrom.

". . . Gertrude McBain, Fran Vivian, Joseph Mazeika—

". . . Daniel Queen, Arpad Balla . . . Lucius Armstrong—

". . . Charles Wilson and Joseph Zawadowski.

"There were others. I don't have their names at the moment." (Counsel's questions about spelling names omitted.)

In another hearing during executive interrogation of a friendly witness, Committee counsel read into the record the names of over 100 alleged Communists, asking the witness to identify those who were students at the University of California. The witness so identified two names. All the names read to him were printed when the executive session was released for publication. (H. 16, pp. 3508-9.)

In the hearings regarding Violations of State Department Travel Regulations and Pro-Castro Propaganda in the United States (1964), the Committee set out in the transcript the names of over 80 persons who had traveled to Cuba on United States passports along with certain information extracted from their passport applications. (H. 157, pp. 2190-2208.)

On occasion the Committee has had friendly witnesses place into the record names of persons who are not alleged to be members of the Communist Party but has made no distinction between them and other persons who were named. (H. 61, p. 4312.)

Payments To Committee Witnesses

During the debate on the Committee's resolution to certify intervening plaintiff Milton Cohen to the United States Attorney for contempt of Congress, it was revealed that witnesses testifying before the Committee had been paid by the Committee for their testimony. The relevant debate follows (Congressional Record (Daily Record) Oct. 18, 1966, p. 26393):

> "Mr. Hays: . . . Will the gentleman inform me as to whether the so-called witnesses were paid by the committee, or were under contract to the committee and paid in that fashion?
>
> "Mr. Weltner: To the best of my knowledge, information, and belief, there was no contract or remuneration with regard to these two witnesses [Lola Belle Holmes and Lucius Armstrong] in connection with their appearance in executive session. I state that on the best of my information, because I have no information to that point.
>
> • • •
>
> "Mr. Hays: The gentleman is aware, however, Mr. Speaker, that in times past the House Committee on Un-American Activities has paid witnesses, and has used the device of putting them under contract to keep their names from the public records to pay them?
>
> "Mr. Weltner: I have served in this body for only four years, and I have no knowledge of such a practice.
>
> "Mr. Hays: Mr. Speaker, I will tell the gentleman that I have signed contracts which I have been told as the chairman of the Contract Committee, was a device to keep these witnesses' names off the public payroll."

Two days later Rep. Hays inserted into the Congressional Record the following list of persons who had been under contract with the Committee during the previous five years and the amounts of their contracts (Daily Record, October 20, 1966, p. 85454) (this material does not appear in the

permanent edition of the Congressional Record):

Committee on Un-American activities contracts approved

87th CONG.

Name	Date Approved	Amount
Lillian E. Howard	May 3, 1961	$ 1,800.00
Maurice Malkin	June 8, 1961	400.00
Ruth Taylor Hunter	Feb. 1, 1962	1,800.00
Total		4,000.00

88th CONG.

1st SESS.

John Santo	Mar. 14, 1963	$ 2,500.00
George H. Lynch	July 17, 1963	1,000.00
Margaret Ann Kerr	do	1,800.00
John Lautner	Dec. 11, 1963	1,000.00
Herbert Romerstein	do	1,000.00
Total		7,300.00

2d SESS.

Margaret Ann Kerr	Aug. 24, 1964	$ 800.00
Andrew J. Berecz	Oct. 2, 1964	200.00
Charles S. Weatherholt	Do	378.59
George H. Lynch	Jan. 2, 1965	4,500.00
Total		5,878.59

89th CONG.

1st SESS.

John Sullivan	June 25, 1965	$ 3,600.00
William Hendrix	July 2, 1965	250.00
George H. Lynch	Aug. 20, 1965	3,000.00
John D. Sullivan	Sept. 2, 1965	3,600.00
Do	Dec. 28, 1965	3,600.00
Total		14,050.00

2d SESS.

Phillip Abbott Luce	Aug. 22, 1966	$ 1,000.00
George H. Lynch	Oct. 11, 1966	3,000.00
Total		4,000.00

TREATMENT OF UNFRIENDLY WITNESSES

The Committee often accuses unfriendly witnesses, rather than attempting to elicit information from them.

The Committee routinely asks witnesses whether they were members of the Communist Party. The form and substance of these and similar questions, often highly argumentative, make it clear that the function of these questions is not to obtain information, but rather to expose and accuse. As the Court said in *People* v. *Mullings,* 83 Cal. 138, 23 Pac. 229, 231-2 (1890), "It is quite evident that the questions and not the answers were what the [questioner] thought important."

Lansing, 1954

"Mr. Scherer: He was a fellow student of yours and a fellow Communist of yours and attended the meeting at Prague—

"Mr. Sharp: Are you making an accusation against me on something that hasn't been proved by this Committee?

"Mr. Scherer: Is my accusation that you were a member of the Communist Party false, sir?

"Mr. Sharp: You are not a court. You have no right to make any accusation.

"Mr. Scherer: I am asking you whether the accusation that you say I am making is true or false.

"Mr. Sharp: I understand, but you continue to be in violation of your oath of office by destroying the separation of powers and acting as a court." (H. 82, p. 5410.)

Detroit, 1954

"Mr. Clardy: I hope you appreciate the fact that this committee is giving you at the very earliest possible moment after you were identified [as a Communist] an opportunity to speak out in your own defense. I hope you appreciate that, and I would like to ask you now whether or not the testimony given by the previous witness concerning you was true or false?

"Mr. Chrin: Under the fifth amendment I respectfully refuse to answer that question on the grounds that an answer might tend to incriminate me." (H. 82, p. 5203.)

St. Louis, 1956

"Mr. Scherer: The fact is you did not get near Greece, did you?

"Mrs. Pappademos: I refuse to answer that question on the fifth amendment.

"Mr. Scherer: You swore at the time you made this application for a passport that you were going to visit your husband's relatives in Greece, did you not?

"Mrs. Pappademos: I reassert my privilege under the fifth amendment.

"Mr. Scherer: And when you so swore you lied to the State Department, did you not?

"Mrs. Pappademos: I reassert my privilege under the fifth amendment.

"Mr. Scherer: You obtained this passport from the government of the United States by fraud?

"Mrs. Pappademos: I reassert my privilege period." (H. 100, p. 5054.)

New Haven, 1956

"Mr. Arens: Why do you not then stand up like a red-blooded American and deny the accusation made by Mr. Kent that you have been or are a member of the Communist conspiracy?

"Mr. Gilden: I have already said that this is a degrading experience, and I will exercise my rights under the first and fifth amendments." (H. 105, p. 5600.)

• • •

"Mr. Arens: Why do you not stand up like a red-blooded American and deny that you are a member of the Communist Party while you are under oath?

"Mr. Dichter: Are you asking a question?

"Mr. Arens: Yes, sir.

"Mr. Dichter: I invoke the fifth." (H. 105, p. 5711.)

Baltimore, 1957

"Mr. Arens: Then stand up like a red-blooded American and deny that you are a member of the Communist Party. [Applause.]

"Mr. Willis: We will not have any such outburst in the courtroom either favorable or adverse to any witness. This must be enforced.

"Mr. Arens: Will you kindly answer the question?

"Mr. Nichol: I think that my service in the Army speaks for itself as regards my Americanism and conduct as a citizen.

"I respectfully decline, however, under the circumstances surrounding this whole hearing, and so forth, under the first and fifth amendments to answer that question." (H. 114, p. 1068.)

New Haven, 1957

"Mr. Arens: Have you ever been a member of the State executive board of the Communist Party?

"Mr. Gruber: Same answer.

"Mr. Arens: I put it to you as a fact and ask you to affirm or deny the fact, that you were a member of the State executive board of the Communist Party in the State of Connecticut.

"Mr. Gruber: Same answer." (H. 105, p. 5766.)

San Francisco, 1957

"Mr. Scherer: I ask you as a matter of fact and ask you to affirm or deny that while you were a member of the armed forces you wrote a letter in time of war to the Russian Government offering your services?

"Mr. Nissen: I refuse to answer that, sir." (H. 115, p. 1208.)

"Mr. Scherer: Your chief duty as a Communist functionary was to see that the Farmer's Union was infiltrated as far as possible with members of the Communist Party; is that not so?

"Mr. Cantor: You are making assertions, sir.

"Mr. Scherer: I am making an assertion and is that assertion incorrect?"

"Mr. Cantor: I will not cooperate with you in this type of assertion, and therefore I will not answer your question. I will decline on the grounds that I have given." (H. 123, p. 2863.)

Newark, 1958

"Mr. Arens: Why don't you stand up like a red-blooded American, and deny that you are a Communist?

"Mr. Leavy: Because, as a red-blooded American I am going to uphold the Constitution of the United States including the first and the fifth amendments." (H. 123, p. 2811.)

Boston, 1958

"Mr. Arens: Then would you kindly stand up like a red-blooded American and deny the identification of yourself as a member of the Communist Party conspiracy while you were under oath?

"Mr. Rex: I will not do that. (H. 121, p. 2257.)

* * *

"Mr. Doyle: Yes. You said you didn't know of an informer who had told the truth. Now he is under oath and subject to prosecution for perjury. So are you, if perjury is proven on your behalf.

"Now, I will ask you again: Here is an open and shut opportunity for you to either affirm or deny that he was telling the truth when he identified you as a Communist. Why don't you take advantage of it?

"Mr. Schirmer: I don't wish to provide a link in a chain of evidence that might be used against me.

"Mr. Doyle: It is probably because the gentleman who identified you as a Commie you know full well was telling the truth. That is the way I appraised his testimony. (H. 121, p. 2266.)

Chicago, 1959

"Mr. Moulder: . . . you have been accused (identified) here by the witness, Mr. Nelson. . . .

"Now do you wish to deny or affirm the statement made by Mr. Nelson in his testimony concerning your Communist activities?" [Witness declined to answer] (H. 128, p. 538.)

Chicago, 1965

"Mr. Nittle: Miss Hayes, have you ever at any time during your period of membership in the Communist Party known Dr. Jeremiah Stamler to be a member of the Communist Party?

"Mr. Wolf: I object to the question. There has been no evidence to that effect. I object to this whole line of questions, if the chairman please. These questions are designed not to elicit any answers. It is completely clear that the witness is not going to answer any of these questions. The questions are designed only for the sake of the questioning.

"The Chairman: It would be the wish and fervent hope of the Chair that the witness might see some light after a while and give us information within her knowledge. We are only receiving information within her knowledge, which we believe she could lay on the line.

"Now with reference to naming names, those people will have ample opportunity to refute under oath the things that have been said or brought out in the course of the examination." (Ex. 50, p. 512.)

* * *

"The Chairman: Yes. Miss Holmes, under the pains and penalties of perjury, under oath, did make that statement. Now it would be interesting if your client, under the same pains and penalties, would deny so that you would have a sharp issue for referring the record to the Department of Justice. Obviously there would be a flat contradiction and probably some action for perjury. So I say that would be a splendid opportunity for her to confront her accuser, that we have been talking about so much here and hearing about so much." (Ex. 50, p. 514.)

* * *

"Mr. Nittle: Now, Mrs. Jennings, in the light of our information that you had had an initial break with the Communist Party in 1961 because of a dispute with another party member, we should like to inquire whether you have, in fact, had further contact with the Communist Party or cooperated with it in any way since that time?

"Mrs. Langford: May I object to the form of the question, it presupposes she was a Communist Party member. That is one of the issues in this hearing, I believe.

"Mr. Nittle: If there is any factual content in that question which the witness finds to be untrue, she now has the opportunity under oath to state the fact." (Ex. 50, p. 527.)

* * *

"The Chairman: Well, before I rule, let me say that I reject the last part of your statement — the 'innuendoes' and references to 'defamation' of citizens of the United States. Here is a grand opportunity for your client, Mrs. Hall, and later Dr. Stamler, under pains and penalties of perjury by witnesses who have testified, to deny, explain, confirm, affirm, reject, expose, lambaste — I use every word you can about the testimony of those witnesses." (Ex. 50, p. 540.)

* * *

"Mr. Jenner: Mr. Chairman, I rose to inquire that I understand that you, Mr. Chairman, and the committee denied my request to cross-examine the previous witness.

"The Chairman: Yes, I have ruled on that. And let it be shown that I also said here is a magnificent opportunity on the part of Dr. Stamler, while he is under oath, to deny or affirm that he is, or has ever been, a member of the Communist Party and all those things said about him." (Ex. 50, p. 500.)

* * *

For other similar accusatory questions see H. 82, p. 5488; H. 101, p. 1556; H. 105, pp. 5742, 5766; H. 107, pp. 1559-63; H. 114, pp. 938, 942-43, 990, 1002; H. 122, pp. 2718-19; H. 125, pp. 350-55, 388; H. 142, p. 112.

The Committee already has the answers to defamatory questions it puts to unfriendly witnesses.

As in the May, 1965, Chicago hearings, the Committee frequently puts questions to unfriendly witnesses indicating that the Committee already has the information it purportedly seeks, whether from an informer, FBI agent, testimony in the same or another hearing, or otherwise.

For example:

> "Mr. Tavenner: Mr. Tyre, was this question propounded to you by Mr. Wheeler, investigator for the committee, on the occasion mentioned, and at the place mentioned, that is, at room 401 of the Taft Building, on December 14, 1965:
>
> Mr. Tyre, a witness, appeared before the committee in executive session during the Hollywood hearings, and testified under oath to the committee that he was a member of the Communist Party, and that he was a lawyer, and assigned to the lawyers' branch in Los Angeles, and during the course of his testimony he identified you as a fellow member of the party. Do you wish to confirm or deny that?
>
> to which question you replied:
>
> That is correct.
>
> "Was that question ever asked you, and was that answer made by you?
>
> "Mr. Tyre: I decline to answer on the grounds previously stated, Mr. Tavenner." (H. 52, p. 2590.)

Counsel continued reading portions of the testimony of Mr. Tyre in consultation with Mr. Wheeler for twelve pages of transcript despite the witness' continued declinations. Following the witness' appearance, Mr. Wheeler, the committee investigator, was sworn and introduced the entire transcript of his consultation with Tyre into the record. (H. 52, pp. 2606-15.)

Detroit, 1952

"Mr. Tavenner: The Committee, in the course of its investigation, has learned also that your consent was solicited to write a letter to Governor Dewey of New York requesting a pardon for Morris Schappes. Were you requested to write such a letter?

"Reverend Hill: On advice of counsel, I refuse to answer the question under the fifth amendment." (H. 55, p. 2826.)

Lansing, 1954

"Mr. Moulder: Are you acquainted with our investigator, Mr. Don Appell, who sits at the table beside Mr. Tavenner?

"Dr. Nickerson: I met him in my office in Ann Arbor.

"Mr. Moulder: While you were in your office, and when you met him there, did you have a discussion concerning your Communist Party membership while employed at the University in Utah?

"Dr. Nickerson: I decline to answer that question on the basis of the previously stated grounds.

* * *

"Mr. Moulder: Well, did he ask you whether or not you were a member or had been a member of the Communist Party while serving in your employment at the University of Utah?

* * *

"Dr. Nickerson: He did, yes.

"Mr. Moulder: Do you recall what your answer was to his question?

* * *

"Dr. Nickerson: I recall in a very general way. It was, shall we say, an unfriendly discussion. I don't recall the details. I recall in a general way.

"Mr. Moulder: Didn't you at that time admit that you were or had been, rather, a member of the Communist Party while employed as professor at the University of Utah?

* * *

"Dr. Nickerson: I decline to answer that on the previously stated grounds." (H. 82, pp. 5339-40.)

* * *

"Mr. Davis: . . . I am willing to give all of my notes that I have on my person here if you in exchange will give all of the notes you have on me.

"Mr. Clardy: I have already explained to you that you are going to discover a great many things that we know before this proceeding is over. It will extend well into the afternoon." (H. 82, p. 5463.)

Charlotte, 1956

"Mr. Arens: Were you present when Mr. Charles Childs was initiated in the Communist Party? * * *

"Mr. Feldman: Same answer.

"Mr. Arens: You helped induct him in the Communist Party; did you not?

"Mr. Feldman: I offer the same answer.

"Mr. Arens: You did not know when you inducted him into the Communist Party that you were inducting in the Communist Party an FBI agent, did you?

* * *

"Mr. Feldman: I offer the same answer.

"Mr. Arens: To that extent the committee is in your debt for inducting into the Communist Party an FBI agent." (H. 96, p. 3598.)

Pittsburgh, 1959

"Mr. Arens: Mr. Steinberg, this morning Mr. and Mrs. Hamp Golden, testified under oath before this committee that for a period of time while they were members of the Communist Party at the behest of the Federal Bureau of Investigation, to get information to help protect this country against this conspiracy, they knew you, sir, as a member of the Communist Party. We would like to give you an opportunity now, while you are under oath, to deny that assertion. Do you care to avail yourself of that opportunity?

"Mr. Steinberg: First and fifth." (H. 125, p. 353.)

Washington, D.C., 1960

"Mr. Arens: You told me yesterday in my office that you had recently broken from the Communist Party, did you not?

"Mr. Thompson: I refuse to answer under the fifth amendment.

"Mr. Scherer: Were you threatened in any way since you talked to Mr. Arens yesterday?

"Mr. Thompson: I refuse to answer under the fifth amendment.

"Mr. Scherer: Did you tell anyone who is a member of the Communist Party that you had talked with Mr. Arens about your membership in the Communist Party, and that you had planned to testify? Did you tell anyone?

"Mr. Thompson: I refuse to answer under the fifth amendment.

"Mr. Arens: I urged you yesterday to appear today and if you have broken from the Communist Party to testify like a redblooded American about this conspiracy, testify for your Government respecting the operations and machinations of this conspiratorial force which would destroy this Government and freedom on American soil, did I not?

"Mr. Thompson: I refuse to answer under the fifth amendment." (H. 139, p. 1826.)

Washington, D.C., 1962

"Mr. Nittle: Yes; there are all kinds of poison in this world, and for that reason, I must ask you a question which will follow.

"In an appearance before the U.S. Senate Investigations Subcommittee, Committee on Expenditures in the Executive Departments, on Friday, July 30, 1948, William W. Remington identified you as his mother-in-law and as a Communist. He testified that you once held a position as a director of the Hessian Hills School in Croton and that you were forced out of that position when your Communist affiliations were revealed.

"He indicated that a person named Alvin Warren, who had fought in the Abraham Lincoln Brigade in Spain, came to live at your home and completed your conversion in which Joseph North, the editor of the Communist *New Masses,* now a contributor to *The Worker,* participated, and who had been brought to your home by Alvin Warren about the year 1940.

"Was there any inaccuracy in the testimony of William W. Remington which I have summarized?

"Miss Moos: I stand on my prior claim." (H. 155, p.2157.)

Washington, D.C., 1962

"**Mr. Nittle:** Did you not testify before the Special Committee on Un-American Activities in Washington on October 6, 1939?

"**Mr. Chancey:** I remember having been at such a committee. I haven't the faintest idea what took place there. It was a long, long time ago.

"Mr. Nittle: Were you asked this question at that hearing by the chairman:

> Suppose we were at war with Russia, what would be your position as between the United States and Russia? Would you favor United States or Russia?

"And did you reply to that inquiry:

> I would wait for such a thing to happen." (H. 153, p. 1122.)

* * *

Following refusal of Mr. William Henry Cooper to answer questions about Communist Party membership (see pp. 91-93 below), the following occurred:

"Mr. Wetterman: I am an investigator with the Committee on Un-American Activities.

"Mr. Nittle: And you have been employed in that capacity for what period of time?

"Mr. Wetterman: Since December 5, 1960.

"Mr. Nittle: You were in the Caucus Room on Monday, June 4, 1962, at which time a person named William Henry Cooper was called to testify?

"Mr. Wetterman: That is correct.

"Mr. Nittle: Did you have occasion to identify him prior to his appearance in the Caucus Room on that day?

"Mr. Wetteman: Yes. We had testimony from Mrs. Julia Brown, and also statements to me personally from Mr. Cooper during a trip to Cleveland, the week of April 2, 1962.

"Mr. Nittle: Prior to April 2, 1962, did you know William Henry Cooper?

"Mr. Wetterman: No, I did not.

"Mr. Nittle: Will you tell us when you first met him and what were the circumstances?

"Mr. Wetterman: It was during the week of April 2, 1962. I was in Cleveland, Ohio, on routine business for the committee and had decided to call on the William Cooper family, basing the call on information that Mr. Cooper might possibly be a cooperative witness for the committee. That afternoon I spoke with Mrs. Cooper and questioned her with regard to Communist activities in the Cleveland area.

Mr. Nittle: Was her husband at home?

"Mr. Wetterman: No, he was not at home. He was at work during the day. Mrs. Cooper stated that she had been a member of the Progressive Party. On further questioning with regard to Communist Party activities, she appeared rather hazy and sort of reluctant to make any comments. I returned later that evening when Mr. Cooper was home and asked him similar questions of his party activities, which he initially denied. On the presentation of various evidence and following with questions on pertinent points of activity he had been engaged in, he finally admitted that he had been a member of the Communist Party from 1944 until the mid-1950's.

"Mr. Nittle: When you say he 'finally admitted' Communist Party membership, will you state for the record what the conversation was as accurately as you can state it?

"Mr. Wetterman: Well, I had a number of confidential reports of Mr. Cooper's activities, and I informed him the committee had received testimony that he had been a member of the Communist Party. Upon presenting him with that information he finally admitted that he became a member in 1944, had a party membership card in the late forties, and that he had gotten out of the party around 1955 or 1956 at the time of the Smith Act trials in Cleveland. I also asked Mr. Cooper at that time if he had knowledge of Joe Hill and Albert Young and if he had been active in Young's political campaign. He stated that he had never heard of them before.

"Upon his admission of party membership, he did state that Frieda Katz had come to his home in the middle fifties when he was attempting to get out of the party and had told him that he should remain in the party because it was an organization fighting for the civil rights of Negroes and it was important he remain a member. He stated to me that he began to realize he was being used by the Communist Party and that it was not for the civil rights of the Negro people and, hence, his gradual disassociation. I told Mr. Cooper that it might be necessary for him to come to Washington and so testify and he finally agreed to do so, though rather reluctantly.

"My next contact with Mr. Cooper was on May 7, 1962, when I called at the Cooper residence, again in the afternoon, and Mr. Cooper was not there. I talked to some extent with Mrs. Cooper in a general way, and it so happened that her daughter, Winnie Cruise, was there. I asked Mrs. Cooper if I could talk with Winnie Cruise and would she leave us alone. I asked Winnie Cruise how long it had been since she left the Communist Party. She said that she had left the party in the late forties or early fifties; she didn't recall.

"Mr. Johansen: That is she herself, the daughter?

"Mr. Wetterman: She, Winnie Cruise, the daughter. I asked her if it was not a fact that she attended a Communist Party school in New York City and she

said yes, she had, but it had been so long ago she didn't have too much recollection. She said that she had been quite ill of health and, as a result, was never a functionary of the party. Those are her exact words.

"She stated that the party only wanted people who were healthy and could work day and night for the cause and, therefore, she was not accepted as a functionary of the party and gradually withdrew from it.

"I returned that evening, and Mr. Cooper was there. I told him that we would like to have him in Washington to testify and all that was necessary for him to do was to tell the complete truth the way he had told it to me. He agreed to do so and then he volunteered the information to me that he had campaigned for Joe Hill and Albert Young. I said to him, "Well, Mr. Cooper, the last time I was at your home you denied that you even knew them," and he said, "Oh, yes, I campaigned for them," and he also told me that he knew them to be members of the Communist Party. He stated he knew Dave Katz, Frieda Katz, the Krchmareks, and other lesser leaders of the Communist Party and that he would cooperate with our committee in giving such information. I told Mr. Cooper I would arrange for his transportation and would meet him at the airport on Sunday, June 3. Arrangements were made. I was at the airport on June 3. He did not arrive on the flight as scheduled.

"Checking with the airlines I discovered he had cancelled his reservation and arrived on a 9:30 flight the day prior. I did not see Mr. Cooper until he entered the hearing room on Monday, June 4." (H. 153, pp. 1159-60.)

Minneapolis, 1964

"Mr. Nittle: Now I want to pose another question, which I don't think you can claim to be an innuendo.

"In testimony before the Subversive Activities Control Board on January 13, 1954, Barbara Louise Roehrich, who was identified by Mrs. Gordienko as a

member of her cell at the University of Minnesota, stated, testified that she executed an application for membership in the Communist Party during February of 1949. She further testified that Rachel Tilsen was the chairman of the University Village Club of the Minneapolis Communist Party and Minnesota State treasurer of the Labor Youth League and that she, Rachel Tilsen, took her application for membership in the Communist Party during February of 1949. Mrs. Roehrich also testified that Kenneth Tilsen and several others asked her to joint the Communist Party. Now, did you during February of 1949, or at any time during the year 1949, ask Barbara Roehrich to join the Communist Party?

"Mr. Tilsen: I respectfully decline to answer that question on all of the grounds already urged." (H. 163, p. 1846.)

The Committee's questions often relate to events alleged to have occurred many years before the hearing.

The 1965 Chicago hearing of the Committee was replete with instances in which Committee questions to unfriendly witnesses concerned events alleged to have occurred 15, 20 or even 30 years earlier and without ascertainable relation to the present.

Chicago, 1965

"Mr. Nittle: Prior to taking up your residence in Chicago in 1949, were you a member of a Communist cell or group in San Francisco?" (Ex. 50, p. 531.) (More than 16 years earlier.)

"Mr. Nittle: Were you in attendance at that meeting of the Communist Party held in the home of Willie Mae Smith on December 16, 1949 at 333 East 60th Street in Chicago?" (Ex. 50, p. 534.) (15 years earlier.)

"Mr. Nittle: Did you not, in fact, attend and be employed at Commonwealth College, in Mena, Arkansas, during the period 1930 to 1933?" (Ex. 50, p. 421.) (32 to 35 years earlier.)

"Mr. Nittle: Miss Hayes, according to the information of the committee, in May of 1930 you made application for a United States passport, at which time you stated that you intended to travel in Denmark, Norway, Sweden, Germany, France, and England. Based upon this application, you were issued a passport on May 30, 1930. Is that correct?" (Ex. 50, p. 500.) (35 years earlier.)

"Mr. Nittle: . . . However, it was not until May, 1949 that the first national and constitutional convention of the Congress of American Women was held in New York City — approximately 1 year prior to the invasion of South Korea by Communist North Korea.

"It is our information that you were in attendance in New York City at the first national and constitutional convention of the Congress of American Women. Were you, in fact, in attendance at that convention?" (Ex. 50, p. 505.) (16 years earlier.)

"Mr. Nittle: Miss Hayes, while a social worker, have you been under the discipline of the Communist Party?

"Miss Hayes: I decline to answer the question on the basis of all the grounds and reasons previously stated.

"Mr. Nittle: Were you in 1941 a social worker in Massachusetts?

"Miss Hayes: I decline to answer the question on the basis of all the grounds and reasons previously stated.

"Mr. Nittle: Miss Hayes, I have before me a copy of a magazine titled *Social Work Today* dated February 1952. At page 52 your name is listed, under the column for the State of Massachusetts, as being one of the 1941 "*Social Work Today* Cooperators," and it is noted that those listed men and women —

have made it possible for *Social Work Today* to strengthen and prepare itself for the supreme test of today.

"I hand you this exhibit marked for identification as "Hayes Exhibit No. 4."

"Are you the Dorothy M. Hayes noted as a 1941 cooperator?

"Mr. Weltner: Counsel will rephrase the question.

"Mr. Nittle: The committee has just called to my attention that I had stated that article as being dated 1952. I correct that. That is the February 1942 issue. As I previously stated a moment ago, Are you listed in that issue as a 1941 "Cooperator"?

"Miss Hayes: That is your question, Counsel?

"Mr. Nittle: Yes.

"Miss Hayes: I decline to answer the question on the basis of all the grounds and reasons previously stated."

(Document marked "Hayes Exhibit No. 4" and retained in committee files.) (Ex. 50, p. 506.) (24 years earlier.)

"Mr. Nittle: Now, Mr. Miller, the pending question is whether you knew Yolanda Hall to be a member of the Illinois-Indiana regional board of The American Youth for Democracy at the time you served upon that board in October, 1945?" (Ex. 50, p. 481.) (20 years earlier.)

This pattern is repeated throughout the 1965 Chicago hearing. In the study made by Professor Zeisel (Appendix 5), a count was made of all questions concerning alleged misdeeds directed to the unfriendly witnesses in that hearing; in almost half the cases (47%) the questions clearly related to alleged misdeeds which occurred more than 5 years before.

It is estimated that of all "misdeed questions" asked by the Committee to unfriendly witnesses since 1946, fully one-quarter related to events which allegedly occurred over 5 years before. (See Zeisel study, Appendix 5, Table 7.) Some few examples are:

New Haven, 1956

"Mr. Arens: Do you have a recollection of signing a petition to free Earl Browder back in 1941?" (H. 105, p. 5644.) (15 years earlier.)

"Mr. Arens: I put it to you as a fact and ask you to affirm or deny it as a fact that in 1937, when you took the oath of allegiance you were a member of the Communist Party.

"If it is not so, deny it under oath." (H. 105, p. 5620.) (19 years earlier.)

* * *

Washington, D.C., 1961

"Mr. Tavenner: When was this picnic?

"Mr. Scott: I'd forgotten all about it until now. I couldn't say definitely when it was.

"Mr. Tavenner: That was between 1945 and 1949, was it not?

"Mr. Scott: I think so, some place in there. I don't even remember the year it was.

"Mr. Tavenner: Who were some of the more prominent Communists that you recall attended?" (H. 174, p. 1270.) (12-16 years earlier.)

Washington, D.C., 1962

"Mr. Nittle: You stated that you have attended Vassar College. Would you tell us the years during which you were in attendance there?

"Mrs. Mackenzie: I graduated in 1937. I was there for the previous 4 years.

"Mr. Nittle: During the course of your attendance at Vassar College, were you not the editor of a student publication designated as *Miscellany News*?

(Witness conferred with counsel.)

"Mrs. Mackenzie: I decline to answer that question. It is irrelevant. That was back in the 1930's. It is irrelevant because—I have a right to become an editor or a writer of any publication I see fit.

"Mr. Nittle: We do not question that at all.

"Mrs. Mackenzie: In privacy.

"Mr. Nittle: The American Student Union, Mrs. Mackenzie, was a Communist front which was created

to win masses of student youth to Communist Party objectives. The investigations of this committee and other governmental organizations revealed that to have been the objective of the American Student Union. Chapters of this organization were set up on the campuses of numerous colleges and universities, including Vassar College.

"Were you a member of the American Student Union while you were in attendance at Vassar College?" (H. 155, p. 2149) (25 years earlier.)

* * *

"Mr. Nittle: Mrs. Posner, it is the Committee's information that you were employed as a teacher since 1922 in the New York City public school system, that you resigned as a teacher on September 4, 1952.

* * *

"Were you a member of the Communist Party fraction of public school teachers during the course of your employment at the DeWitt Clinton High School in New York City?" (H. 155, p. 2084.) (10 to 40 years earlier.)

* * *

"Mr. Nittle: Mrs. Hoffman, it is the Committee's information that in the year 1944 you were a member of the Communist Party in the Brooklyn area. Were you, in 1944, a member of the Communist Party?" (H. 155, p. 2109.) (18 years earlier.)

Cleveland, 1962

"Mr. Nittle: Our investigation discloses that at a meeting in the Music Hall, Cleveland, Ohio, on April 30, 1949, it was announced that you were among the largest contributors to the Progressive Party. Was that announcement correct? (H. 153, p. 1147.) (13 years earlier.)

* * *

"Mr. Nittle: You were also in attendance at a concert sponsored by the Progressive Party at Music Hall on March 20, 1950, which featured Paul Robeson, were you not?" (H. 153, p. 1147.) (12 years earlier.)

* * *

"Mr. Nittle: In 1945, did you sign a Communist Party nominating petition on behalf of Benjamin J. Davis for the office of councilman of the City of New York in the Borough of Manhattan?" (H. 153, p. 1146.) (17 years earlier.)

Washington, D.C., 1962

"Mr. Nittle: I state as a fact, Mrs. Goodman, that in Birmingham, Alabama in 1932, at a time when you were about 22 years of age, you became a member of the Communist Party, and that you were assigned Communist Party Card Number 6580. Is that true and correct?" (H. 153, p. 1071.) (30 years earlier.)

Washington, D.C., 1963

"Mr. Nittle: Did you not also serve in the International Brigade in the Spanish civil war during the years 1937 and 1938?" (H. 158, p. 640.) (25 years earlier.)

Minneapolis, 1964

"Mr. Nittle: I hand you a copy of a January 1943 open letter to the Congress of the United States titled "A Message to the House of Representatives," which is marked for identification as "McDonald Exhibit No. 1."

"As appears upon the exhibit, this letter was sponsored by the National Federation for Constitutional Liberties and opposed the renewal of the Special Committee on Un-American Activities in 1943. I direct your attention to the fourth page of the exhibit, where your name, 'Claude McDonald,' identified as financial secretary, Local 1152, United Electrical, Radio & Machine Workers of America, Minneapolis, Minnesota, is among others listed as a signer of this message.

"Did you authorize your name to be used as a sponsor of this message?

* * *

"Mr. Nittle: Were you acting under Communist Party directives in 1943 at the time you opposed the renewal of the Special Committee on Un-American Activities?" (H. 163, pp. 1784-85.) (21 years earlier.)

See also: H. 103, p. 5180 (20 years earlier); H. 115, p. 1186 (20 years), 1192 (15 years); H. 127, p. 754 (32 years); H. 128, p. 596 (23 years); H. 137, p. 2141 (24 years); H. 146, p. 483 (Exhibit entered—20 years earlier); H. 154, p. 1892-4 (Exhibit entered—25 years earlier); H. 155, p. 2157 (22 years earlier); H. 157, pp. 312 (26 years), 521 (16 years), 551 (20 years); H. 163, pp. 1802 (19 years), 1836 (14 years), 1839 (14 years), 1864 (30 years), 1921 (16 years.)

The Committee often demeans unfriendly witnesses.

One of the most striking aspects of the Committee's conduct revealed by the transcripts of its hearings is its repeated subjection of subpoenaed witnesses to humiliation, harassment, and abuse, especially by creating an invidious contrast between views attributed to witnesses by the Committee, on the one hand, and the Committee's political orthodoxy on the other. The forms of harassment used by the Committee are so varied as to defy precise categorization. Many appear in other parts of this Appendix. Examples follow:

Washington, D. C., 1950

"Mr. Wood: Do you believe that the Un-American Activities Committee is a greater menace to our free institutions than the Communists are?" (H. 16, p. 377.)

Detroit, 1952

"Mr. Jackson: Mr. Chairman, I think in the light of the witness' attitude toward the questions of counsel, that there certainly is no reason for asking any further questions. It is quite obvious that he is not going to answer any questions having to do with his Communist Party activities, which are alleged to have taken place within and outside of the Communist Party.

"I do think that I should like to make a very brief statement: Men who have the high calling of the

ministry, men who are dedicated to God and to His works are today rotting in prison cells in every country in the Communist orbit. Their Bibles are rotting beside them. It is bad enough in these days when we are waging a war against communism, when our men are dying by the thousands, that any man can commit the treason of membership in the Communist Party or of lending aid, or comfort or assistance to the Communist Party. To do so stamps them as enemies of the United States of America.

"For a minister, for a man of the cloth, to aid or comfort or endorse or lend his assistance to Communists or to the Communist Party, is to compound the offense by including God Almighty in his treason. That is all I have to say." (H. 55, p. 2832.)

Michigan, 1954

"Mr. Scherer: Witness, you made application for a passport in June 1950, did you not?

"Mr. Sharp: My name is Mr. Sharp. I would urge you to call me by that instead of 'Witness.'

"Mr. Scherer: I can hardly use the appellation 'Mr.' in view of your conduct, so I call you 'Witness' as I am allowed to do." (H. 82, p. 5412.)

* * *

"Mr. Clardy: Why I ask is that in the prior testimony you reiterated, as we have had said thousands of times before us, that you were not going to state anything about your political beliefs and so on. This committee, the other investigating committees, and your Government as a whole, does not regard the Communist Party as a political party. We regard it as nothing less than a criminal conspiracy of a group of people taking orders from a foreign government dedicated to the proposition of destroying this Nation by force and violence, and if you have in mind that we are going to take any other attitude, you are mistaken, but if you use the word 'political' from here on out, I want to be sure that you are thinking of the Communist Party and denominating it as a political party, so I come back to my question. Is that your

attitude toward the Communist Party? That is regardless of what you are, whether you are one or not. I am just asking you for your belief.

"Mr. Falk: Your statements on this question are somewhat confusing to me because at one time you come out and say that the Communist Party is a legal political party. It hasn't been outlawed yet or something to that effect." (H. 82, pp. 5581-82.)

Seattle, 1954

"Mr. Clardy: You have been directed to answer the question. Now proceed to do so and desist from the party line tactics, Witness." (H. 59, p. 6280.)

Charlotte, 1956

"Mr. Myers [witness]: If the Federal Government has the right to force me to say if I am a Communist or not, the Federal Government also could assume the right to question me as to whether I am a Democrat or Republican.

"The Chairman: We have that right. Nobody has ever questioned it." (H. 96, p. 3527.)

• • •

"Mr. Arens: Where was your courage and patriotism when you joined with others urging the withdrawal of the United States troops from Korea while they were engaged in mortal combat with the North Korean Communists?

"Mr. McGirt: The same answer, sir." (H. 96, p. 3589.)

• • •

"Mr. Arens: Tell us all of the organizations you belong to which could not, by the wildest stretch of the imagination, be called Communist controlled or dominated or front organizations.

"Mr. Van Camp: I am afraid I will have to refuse to answer. (H. 96, p. 3625.)

"Mr. Arens: Would you want that child to grow up in a republic permeated and threatened by an international godless conspiracy?

(Witness consulted her counsel.)

"Mrs. Robertson: I am happy that my child is an American, just as I am happy that I am an American. However, I am afraid that I will have to refuse to answer under the first and fifth amendments.

"Mr. Arens: Would you want to serve your Nation by giving information respecting a conspiracy so that child of yours can grow up in a free society, worship God as he pleases, speak freely, have the rights accorded him under the Constitution?

(Witness consulted her counsel.)

"Mrs. Robertson: My answer to this is the same as the previous." (H. 96, p. 3633.)

Washington, D.C. 1956

In the 1956 investigation of the Save Our Sons Committee, Rep. Kearney commented on the testimony of a witness who had consistently answered questions by stating, "I refuse to answer under the Fifth Amendment" (H. 102, p. 5122):

"Mr. Chairman, I would like to make an observation at this point. From the testimony of the witness, I think the answers she has given are as phony as a three-dollar bill."

New York, 1957

"Mr. Doyle: * * * The only reference in the introduction, apparently made by a man with your name, is to revolutionary songs from foreign countries, emphasizing the Soviet Union and Germany. There isn't a single American song called to attention in that introduction. I do not know why. Well, I can see why. I can see why someone with a clever thought used the title 'America Sings' and then put nothing in there except Russian and German revolutionary songs. There is not an American song called to attention. And yet they call it America Sings. And that is

the kind of Soviet propaganda that is infiltrating our country.

"I have one thing more, Mr. Robinson. Can you show me in your writings, and I ask you in good faith, one single song upholding and promoting loyalty to the Stars and Stripes, to the American flag?

"Mr. Robinson: Everything I have written does this.

"Mr. Doyle: Show me one in wording, where you emphasize in your lovely music and prose and poetry, where you urge the American people to uphold the Stars and Stripes. I didn't see one in that ballad.

"Mr. Robinson: It seems to me that these lines that I quoted to you before say this.

"Mr. Doyle: Do you find where you urge the American people to uphold the Constitution and the Stars and Stripes, where you are telling the American schoolchildren?

"Mr. Robinson: Do you mean my quoting, 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator,' I am just fooling around with that?

"Mr. Doyle: That is quoting. I mean where you write a poem yourself. My point is this: Show me one poem or one song where you have deliberately set to music or otherwise, that the American schoolchildren, for instance, or the Americans, shall support the Constitution, and so forth. Do you see what I am getting at?

"Mr. Robinson: I have a song called, The House I Live In. That is America to me. It has sold millions and millions of copies. It has been sung by most of the big singers in the country at one time or another. This says:

> *What is America to me? A name, a map, the flag I see; a certain word, democracy. What is America to me? The house I live in. The plot of earth, the street, the grocer and the butcher, the people that I meet.*

"The middle section goes on, the words of old Abe Lincoln, of Jefferson and Payne, of Washington and Roosevelt.

"Mr. Doyle: Mail me a copy and I will pay you for it, gladly.

"Mr. Robinson: The biggest line in it is 'A dream that has been growing for 150 years.' This has been sung. School kids know it. You should know it.

"Mr. Doyle: Why, then, do you tear down this theory by this sort of thing? Why do you tear down that magnificent conception of our country?

"Mr. Robinson: I am not tearing down. I never have torn down.

"Mr. Doyle: I beg to differ with you. I say mail me a copy of that, and I will pay you for it, gladly.

"Mr. Arens: I want to clear the record on one thing.

"Are you now a Communist?

"Mr. Robinson: Do you expect me to answer that?" (H. 111, pp. 791-92.)

Baltimore, 1957

"Mr. Doyle: May I ask, don't you think that under our assignment by Congress, that it is always pertinent for us to ask a man whether he is a Communist?" (H. 142, p. 113.)

Buffalo, N.Y., 1957

"Mr. Arens: We can try it and see how far we get. We want information. We think you have information. It is obvious we are not getting very much. You are now on record as opposing the Communist conspiracy, wanting to destroy it, that which menaces our Christian civilization. Thus far you have told us that you wouldn't tell us the other operators in this field, and thus far you tell us you have just been engaged in some innocent philosophical discussions which curiously enough have been held in secret.

"Tell us, if you please, sir, if you are sincere, and if you are willing to help this Government and this committee with the mandate from the Congress of

the United States, tell us what you know, sir, about the operations of the Communist Party, and what you did in the Communist Party.

"Mr. Ingerman: I will sketchily indicate, try my best to answer your question. While a member of the John Reed Club, most of the activities of that club and myself centered around highlighting questions of academic freedom. I contributed at that time to a newspaper that the club printed and distributed. I participated— (H. 117, p. 1663.)

Boston, 1958

"Mr. Doyle: Well, you were in it one time, I am going to assume. Why don't you make up to your country and do something positive in the best interest of your country, something to make up for the time you were in the filthy outfit? Why don't you do something to strengthen the form of your own American Government, to make up for the weakness you contributed to it during the time you were in the Communist Party?" (H. 121, p. 2244.)

* * *

"Mr. Arens: Did you ask them [Soviet officials] about the 20,000,000 people they have shot down, just mowed down like they were wheat in Kansas, in the course of the ascendancy of this awful thing called communism in Soviet Russia? Did you ask them about that?

"Mr. Lefavour: I didn't ask them about that." (H. 121, p. 2411.)

* * *

Mr. Arens: . . . You know you were talking about fighting Fascists.

"Mr. Chase: That is right.

"Mr. Arens: Fighting Hitler and fighting Mussolini. There is another force loose in the world today, Mr. Chase. It is a conspiracy, a Godless, atheist conspiracy, out to destroy all Christian civilization, out to destroy all mankind, out to destroy every person

who is not part and parcel of this atheistic, Godless conspiracy.

"The head of it now is a man by the name of Krushchev. He would make Hitler and he would make Mussolini look like innocent Sunday school boys, Mr. Chase." (H. 121, pp. 2358-59.)

* * *

"Mr. Arens: Do you know that your Government, through your Congress, has found the Communist Party of the United States to be part and parcel of an international conspiracy controlled from Moscow? A conspiracy, which from 1917 to 1924 alone, killed off of their own countrymen, 12,000,000 people by assassinations, executions, and famines; that in the last 30 years, the average population of the slave labor camps of the Soviet Union has been, the annual population, between 12 and 13 million people; that in Red China alone, an average estimate, a conservative estimate of 20 million human beings have had their lives snuffed out in that process, the ascendancy of this conspiracy. Today this conspiracy controls 900 million people on this globe, approximately a third of the People on this globe; that today this conspiracy has as its Number One target the United States of America; that the Soviet Union and its satellites, with 25 million agents strung around this world in a deadly fifth column, are seeking to destroy by every means possible the Nation under whose flag you obtain protection; and that you, sir, were in an organization for a number of years, by your own testimony here, which is part and parcel of that international conspiracy and you are now in the presence of a congressional committee seeking to procure information respecting the function and operation of that conspiracy in the United States so that this committee can return to Washington, D.C. and use that information, in connection with other information we have acquired elsewhere in the Nation, to appraise legislation designed to meet this awful Godless threat?

"Now, sir, please tell this committee the first cell to which you were attached in the Communist Party in the United States.

"Mr. Rosenkrants: Sir, I am very glad you made the statement you made. I feel that I have very good reason to be ashamed of my membership in the Communist Party." (H. 121, pp. 2330-2331.)

Atlanta, 1958

"Mr. Arens: . . . A Communist is a person who is part and parcel of the Communist Party, either aboveground or belowground in the United States, the Communist operation. About 100 years ago there was a German scholar, Karl Marx. He evolved a philosophy of world revolution, an atheistic, communistic program. That was given a catalytic response by Nicolai Lenin, 50 years ago, at which time he and a band of revolutionaries seized control of the government. That movement has spread over the world. It has 33,000,000 agents over the world, in a death grip with all the God-fearing people, all that God-fearing people believe in. In the United States, 25 or 30 years ago that movement got a start. It is a movement that now has enmeshed in its grip 900 million people. It is a movement that proceeds by violence and deceit and subversion to corrupt and to destroy. It is the movement within Soviet Russia itself which has, in its ascendancy, destroyed over 10 million human souls. It has at least 20 million in slave labor camps. It is a movement in Red China, according to the best advices, that has destroyed approximately 40 million souls. It is a movement that is heading toward a total war against the United States of America. It is a movement that has enlisted within the United States a fifth column, dedicated to destroy this Government, which is the last bastion of freedom of any potency to resist this movement in the world.

"We understand, and we have received testimony from live witnesses under oath, responsible people, identifying you, Hunter Pitts O'Dell, as part and parcel of that movement, as a dedicated zealot of the Communist conspiracy in the United States who masquerades behind the Constitution of the United States,

and would desecrate the flag of this great Nation."* (H. 122, p. 2714.)

* * *

"Mr. Arens: . . . Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of the Communist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

* * *

"Now sir, if you will tell this committee, whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Com-

* Compare figures in this and two immediately preceding items.

munist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled "Operation Abolition," in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F.B.I. and discredit the director of the F.B.I. and to undertake to hamstring the work of this Committee on Un-American Activities." (H. 122, pp. 2682-3.)

* * *

"Mr. Arens: Now, sir, I put it to you as a fact and ask you to affirm or deny the fact that you are part of an enterprise to destroy the very Constitution of the United States under which we all have protection; that you are the agent of the Communist Party as an arm of the international Communist conspiracy sent into Atlanta for the purpose of engaging in conspiratorial activities on behalf of the Communist Party. If that is not so, deny it while you are under oath." (H. 122, p. 2687.) (See also H. 122, pp. 2669-70.)

Newark, 1958

"Mr. Scherer: I want to say to you it is professional Negroes like yourself, members of the Communist conspiracy, that hurt the cause of civil rights.

"Mr. Taylor: I resent that. Negro people are not members of any conspiracy. The only conspiracy we are guilty of is to overthrow Jim Crow.

"Mr. Scherer: All right. I had my say.

* * *

"Mr. Scherer: I agree that you are one of those Jackie Robinson said before this committee is a discredit to the Negro race." (H. 123, pp. 2839, 2841.)

Pittsburgh, 1959

"Mr. Arens: Do you believe with all the intensity of your heart in the preservation of the Constitution of the United States?

"Mrs. Schultz: That has been—Are you asking my opinion?

"Mr. Arens: Yes." (H. 125, p. 380.)

(See also, H. 67, p. 5480 (faith in the judiciary); H. 157, p. 2181 (belief in democracy).)

Pittsburgh, 1959

"Mr. Arens: Was it your objective, as education secretary of the Communist Party, to go to the University of Pittsburgh for the purpose of giving respectability, attempted respectability to a conspiracy?

"Mr. Lumer: I will decline to answer that on the same grounds.

"Mr. Arens: Did you discuss with the youth at the University of Pittsburgh the Hungarian uprising in which the tanks of the conspiracy mowed down innocent men and women like wheat?

"Mr. Lumer: I will decline to answer that on the same grounds.

"Mr. Arens: Did you discuss with the students the slave labor camps in Soviet Russia?

"Mr. Lumer: I decline to answer on the same grounds.

"Mr. Arens: Did you discuss with the students the criminal activities of the conspiracy enmeshed in all segments of the society of this Nation?

"Mr. Lumer: I decline to answer on the same grounds." (H. 125, pp. 385-86.)

* * *

"Mr. Arens: . . . Now as to you, sir, you have been repeatedly identified by live witnesses under oath before congressional committees as a hard-core member of the Communist conspiracy—

"Mr. Quinn: That's a lie.

"Mr. Arens: —one who is dedicated to the overthrow of the Government of the United States—

"Mr. Quinn: That is a lie.
"Mr. Arens: —by force and violence.
"Mr. Quinn: That's a lie. . . .

* * *

"Mr. Quinn: I don't have contempt for Congress, just contempt of this Committee. Make that clear.
"Mr. Scherer: I understand that.
"Mr. Quinn: I have every respect for the institutions of our country, including the Congress.

* * *

"Mr. Scherer: All Communists have contempt for this Committee.
"Mr. Quinn: Don't call me a Communist because I told the director that is a lie." (H. 125, p. 412, 418.)

Chicago, 1959

"Mr. Arens: It is the information of this committee and it is the information of the United States Congress—indeed, it ought to be the information of all patriotic Americans—that there is sweeping the world now a godless, atheistic conspiracy known as communism, an international conspiratorial operation of which the conspiracy in the United States is just one tentacle. It is the objective of this conspiracy to crush all human freedom. It is the objective of this conspiracy to stamp out all the values upon which this civilization in the West and the free world has been founded.

"It is the information of this committee, sir, that you are part and parcel of that conspiracy; that you, sir, are a dedicated, hard-core Communist; that you, sir, have been practicing the techniques, conspiratorial operations of the Communist conspiracy within greater Chicago area dedicated to overthrow this Government of the United States and dedicated to destroy the Constitution of the United States, behind which you have sought protection today.

"Before this committee in executive session based upon intelligence information, we believe that you, sir, presently have information respecting the operation

of that conspiracy which is sweeping the world and which, according to this witness this morning and other witnesses of like knowledge, is more serious, a more deadly menace than ever before in the history of this Nation.

"Now, sir, with that explanation of pertinency, I ask you this question: Have you sir, in the course of your life used the name Mike Samuels, S-a-m-u-e-l-s?" (H. 128, p. 541.)

Washington, D.C., 1959

"Mr. Jencks: I am not a member of the Communist Party. . . .

"Mr. Arens: Are you now against the Communist Party?

* * *

"Mr. Jencks: Certainly I have many differences with the Communist Party; many, many differences.

"Mr. Scherer: I have many differences with the Republican Party, and I am a Republican.

"Mr. Jencks: So do I.

"Mr. Scherer: But I am not a Communist.

"Mr. Jencks: Neither am I.

"Mr. Scherer: I am still a Republican.

"Mr. Arens: Now would you tell us whether or not you are now against the Communist Party, please, sir?

"Mr. Jencks: Well, if the Chair rules that my answer is not acceptable to the committee, I will answer further.

"Mr. Scherer: I have directed you to answer. This is the fourth time.

"Mr. Jencks: Well, I have answered but you are not satisfied with my answer.

"Mr. Scherer: We are not satisfied with the explanation as to your refusal to answer the question.

"Mr. Johansen: Do I understand the witness' answer is that he is against many of the things that the Communist Party stands for?

"Mr. Jencks: That is right." (H. 131, p. 1089.)

San Francisco, 1960

"Mr. Izard: I avail myself of the first amendment, which you have already trampled upon, and I avail myself also of that citizen's shield of the Republic, the privilege of not being forced to testify against myself, under the fifth amendment.

"Mr. Scherer: A very fine speech, coming from a Communist," (H. 137, p. 2134.)

Washington, D.C., 1962

"Mr. Nittle: I suggest, Mr. Chancey, that you are a hard-core Communist and that the tears in your voice are quite unbecoming, would you comment on that?" (H. 153, p. 1121.)

Washington, D.C., 1963

"Mr. Nittle: Would you fight for Cuba?

[Laughter.]

"Mr. Nittle: Why do you hesitate in responding to that question, as an American citizen?

"Mr. Waegell: If there is another war we are through.

"The Chairman: Proceed, Counsel.

"Mr. Waegell: I don't care which side I am on, I am dead.

"Mr. Nittle: Well, you also refused to —

"Mr. Waegell: And I decline to answer.

"Mr. Nittle: —to comply with the Selective Service regulations during the Korean war, did you not?

"Mr. Waegell: I decline to answer on grounds previously stated.

"Mr. Nittle: When you refused to comply with the Selective Service regulations and were sentenced on September 24, 1951, to 3 years in prison for your failure to do so, did you then entertain the same views with respect to war as you now do?" [Witness declined to answer.] (H. 157, p. 494.)

Washington, D. C., 1966

"Mr. Ichord: The gentleman's counsel has withdrawn from the case. I do think that, in all fairness to this witness, he should be given an opportunity to obtain additional counsel.

"But I do feel, sir since you have been making so many statements, that the business that is pending before this committee is so important that we do not have time to listen to a bunch of clowns.

(At this point Mr. Clawson entered the hearing room.)

"Mr. Anton: I am not the clown, I will have you know. Bnt listen, Ritchie, really—" (H. 171, p. 1163.)

* * *

"Mr. Ewart: It seems to me that Mr. Pool is rather a fool in this matter, in that he has taken the facts—

"Mr. Nittle: We have similar language spewed forth from the Chinese Communists and from the Soviet Union. Are you repeating that Communist—

"Mr. Ewart: When did you talk to—

"Mr. Nittle: Are you spouting—

"Mr. Ewart: I don't know Chinese Communists. I don't think there are any Chinese Communists in this Nation." (H. 171, p. 1197.)

(See also H. 16, p. 3448; H. 77, p. 3146; H. 82, p. 5211; Id., p. 5574; Id., p. 5447; H. 96, pp. 3550, 3614; H. 105, p. 199; H. 111, p. 653; H. 121, pp. 2326, 2366-67; H. 122, pp. 2695, 2711; H. 135, pp. 1316-17; H. 137, pp. 1964-5, 2061-62; H. 148, pp. 1979-99, 1802; H. 157, pp. 239, 2034; H. 59, p. 6283; H. 96, p. 3532; H. 121, p.2334; H. 122, p. 2677; H. 123, p. 2861; H. 125, p. 456; Id., p. 489; H. 127, pp. 753, 764, 840; H. 137, p. 2006.)

The Committee abuses the Fifth Amendment privilege against self-incrimination.

The Committee sometimes pays lip service to the principle that invocation of the Fifth Amendment privilege

against self-incrimination is not an admission of guilt and that no inference can properly be drawn therefrom. However, the Committee:

(1) Challenges the right of the witness to invoke the Fifth Amendment unless the witness admits that an answer will in fact tend to incriminate him;

(2) Accuses witnesses who invoke the Fifth Amendment of being unpatriotic; and

(3) Expresses the view that invocation of the Fifth Amendment is tantamount to an admission of the truth of the accusation.

EXAMPLES OF COMMITTEE ASSERTION THAT THE FIFTH AMENDMENT IS AVAILABLE ONLY WHEN THE WITNESS CONCEDES THE ANSWER IS INCRIMINATING.

San Francisco, 1953

"Mr. Scherer: What is your employment at the present time?

(At this point, Mr. Wheeler conferred with Mr. Andersen.)

"Mr. Wheeler: I refuse to answer that, sir.

"Mr. Scherer: Mr. Chairman, I ask you to direct the witness to answer that question unless he is an espionage agent for the Russian Government at the present time. Then he could refuse to answer it. Otherwise I think he should be directed to answer.

"Mr. Velde: Yes, I can see no way your employment at the present time would tend to incriminate you unless that were true. I don't think you want the committee to believe that you are an espionage agent at the present time, and I do therefore direct you to answer the question." (H. 77, p. 3148.)

Lansing, 1954

"Mr. Clardy: That means you shall not be compelled to incriminate yourself. Let us not fence with the English language. You know what it means and that it is only invoked by people who are, in my humble opinion, apprehensive that they will do so. You leave that impression every time you raise it, and I don't care how many people argue to the contrary. I don't know of any innocent man that has ever appeared before this committee and invoked the fifth amendment on which we did not have evidence that he was a member of the Communist Party before we asked a question, and that, sir, applies to you as it does to every other one, and yet that would not incriminate you in any way, shape or form, because it is still not a criminal offense to be a member of that party, I am giving you a lecture on it because my patience is getting somewhat thin of hearing that raised and then hearing people go forth and prate about free speech, as the previous witness did, about an invasion of their right of privacy and all that sort of thing, as though they had something to hide. Now, if you have nothing to hide, you ought to tell us." (H. 82, p. 5375.)

Charlotte, 1956

"Mr. Arens: Do you honestly apprehend that if you told this committee under oath whether or not you are presently receiving instructions in your work, at the plant at which you are employed, from a foreign power you would be supplying information which could be used against you in criminal proceeding?

"Mr. Williams: Same answer." (H. 96, p. 3570.)

Buffalo, 1957

"Mr. Willis: Three witnesses who did not feel like you about it, and who felt an obligation truthfully to answer questions, answered under oath, subjecting themselves to the pains and penalties of perjury if they were not telling the truth, and said that you were

a Communist. What are you talking about unjust prosecution if three witnesses swear that you were a Communist? If you want to invoke the privilege of the fifth amendment, don't give us the usual act of being cute around here. Are you invoking the protection of the fifth amendment because you feel that to honestly answer the questions might subject you to criminal proceedings?

"Mr. Brownstone: I am answering under the first and fifth amendments of the Constitution. In relation to the fifth amendment, I am attempting to shield myself against an unjust prosecution.

"Mr. Arens: Would the prosecution of yourself as a Communist be unjust?

* * *

"Mr. Brownstone: The last question will be answered in this way. I refuse to answer that question on the basis of the first and fifth amendments." (H. 117, p. 1671.)

Pittsburgh, 1959

"Mr. Arens: Do you honestly apprehend, sir, that if you told this committee truthfully, while you are under oath, whether or not you traveled abroad on a plan and purpose of international Communist conspiracy, you would be supplying information which could be used against you in a criminal proceeding?

(The witness conferred with his counsel.

"Mr. Devunich: I will say it would be misuse by this committee. That is why I plead first and fifth amendment." (H. 125, p. 499.)

Washington, D.C., 1960

"Mr. Hauser: I stand on the first and fifth amendments which guarantee my right and as an individual—

"Mr. Arens: Do you honestly apprehend, sir, while you are under oath and subject to the pains and penalties of perjury, that if you told this committee whether or not you have transmitted messages as a shortwave operator pursuant to the direction of a

person known by you to be a member of the Communist Party, that you would be supplying information which might be used against you in a criminal proceeding?'' (H. 139, p. 1821.)

Washington, D.C., 1961

''Mr. Scherer: Do you honestly believe that to tell this committee what publications you write for, might lead to a criminal prosecution?

(The witness conferred with his counsel.)

''Dr. Dunham: Well, yes, I do; and I have personal experience of the fact, in view of the fact that I was once brought to trial for a valid use of the fifth amendment.

''Mr. Scherer: What trial was that? I am entirely ignorant of any trial that you were involved in.

''Dr. Dunham: In 1956 a trial for contempt of this committee. 1955. Excuse me.

''Mr. Scherer: Are these publications for which you write Communist publications?

(The witness conferred with his counsel.)

''Dr. Dunham: I will decline to answer that question, seeking again the protection of the fifth amendment.

''Mr. Scherer: I have no further questions.'' (H. 142, p. 98.)

Chicago, 1965

''Mr. Wolf: We have had no opportunity to cross-examine anyone; that has been denied.

''The Chairman: Proceed.

''Mr. Nittle: Miss Hayes, do you have knowledge on this subject?

''Miss Hayes: What subject, sir?

''Mr. Nittle: As to the question of Dr. Stamler's Communist Party membership at any time.

''Miss Hayes: I decline to answer the question on the basis of all grounds and reasons I have given before.

''Mr. Nittle: If you did not possess that knowledge and told this committee that you did not, how could that possibly incriminate you?

"Miss Hayes: I decline to answer the question on all the grounds and reasons given previously to you." (Ex. 50, p. 512.)

EXAMPLES OF COMMITTEE ACCUSATIONS THAT INVOCATION OF THE FIFTH AMENDMENT IS UNPATRIOTIC.

Washington, D.C., 1949

"Mr. Wood: Many of the questions which have been addressed to you and which you refused to answer were addressed to you for the sole purpose of eliciting information to help us in that respect. Notwithstanding your protestations of loyalty to the American Government and its institutions, you decline to aid us in that respect. It is just a little incongruous that a person can take those two positions and still say he is loyal to the the American people and the American Government." (H. 16, p. 352.)

New York, 1957

"Mr. Doyle: I have not drawn any conclusions or inferences, excepting, sir, that I have drawn this conclusion in your case—which I tried to state frankly, as an American Congressman—that I did not understand any man who claims to be a patriotic American citizen as of this date, and to have divorced himself from the Communist garbage pail, if he ever was in it. I do not understand how any such person claiming to now stand for the American free enterprise competitive system in its tussle with the Communist ideology, can come before this committee and feel that it is cricket and helpful to his Government to still be so close to the Communist conspiracy that he has to plead the amendment as of membership today in the party, or under discipline. I do not charge you, you see; I am just saying to you frankly, as one American to the other. Then I am saying I am drawing no inference about you, excepting that the record shows that you were a sponsor of the American Peace Mobilization." (H. 111, p. 848.)

Newark, 1958

"Mr. Arens: If you knew a person who was presently engaged in smuggling narcotics to destroy the moral fiber of this Nation and you were being interrogated by a congressional committee, would you tell that congressional committee about that person whom you knew was a smuggler of narcotics?

(The witness conferred with his counsel.)

"Mr. Cantor: I don't know any such person." (H. 123, p. 2860.)

Washington, D.C., 1959

"The Chairman: You are not under any compulsion. You say, 'I must decline.' You are not under any compulsion whatsoever. If you want to help the Congress and the country, you will not decline to answer." (H. 127, p. 671.)

Minnesota, 1964

"Mr. Nittle: Have you been instructed by Communist Party functionaries to invoke the fifth amendment in response to questions of this committee?" (H. 163, p. 1885.)

* * *

"Mr. Senner: Mr. Witness, we are here to determine facts to establish legislation that will protect the security of this Nation. You have been subpenaed, and have been given an offer to appear in a different capacity also, in an executive session. We bend over backwards trying to afford you an opportunity to help this country. Is the reason that you raise the first, the fifth, and the sixth amendment, to prevent this committee trying to find facts that will help us us protect this country's security?" (H. 163, p. 1801.)

EXAMPLES OF EXPRESS STATEMENTS BY COMMITTEE THAT INVOCATION OF FIFTH AMENDMENT IMPLIES GUILT.

1951

"Rep. Potter: I think it's significant to point out that anyone who hides behind the Fifth Amendment, who in answer to the question as to whether he was

or had been a member of the Communist Party refuses to answer because his reply might tend to incriminate him, leaves the committee with only one choice, to believe that he is a member of the Communist Party. If he were not a member, had not been a member, certainly a truthful answer would not incriminate him and there would be no purpose in seeking the protection of the Fifth Amendment." (97 Cong. Rec. 6205-6 (1951).)

Seattle, 1954

"Mr. Scherer: Again you have not answered the question I last asked you as to whether or not you have been engaged in any espionage activities. You said if you had, you would have been prosecuted.

(At this point Mr. Kirkwood conferred with Mr. Hatten).

"Mr. Kirkwood: If I were charged with a crime or with any sort of espionage in a legal court of law, I would hesitate not at all to answer that question yes or no.

"Mr. Clardy: What would that answer be?

"Mr. Kirkwood: Well, you are asking two questions in a different way. Isn't that true? You know it, yourself.

"Mr. Clardy: It is inconceivable to me, Witness, that any honest patriotic American citizen would

hesitate for one second to answer that question if he were innocent and had never engaged in espionage against his country. You have convinced me, sir, that possibly you have." (H. 59, p. 6287.)

• • •

"Mr. Doyle: Now may I reaffirm this? That I recognize and I am sure the committee recognizes that the opinions of our highest courts—and we follow the courts instead of our own personal opinion—have held that no inference is to be drawn of either innocence or guilt merely because a person claims his constitutional

privilege. Therefore the policy of this committee, following the law, which we always respect, is that merely because a person claims the constitutional privileges that is no reason for us, inferentially or otherwise, to have any belief or take any position that that person is necessarily guilty of any crime. However, as long as a few minutes ago, my name was mentioned as having declared in the public press that the taking of the fifth amendment was a Commie line. I wish to restate now that to my knowledge, in the history of this committee, the taking of the fifth amendment is a Commie line. That doesn't necessarily mean, in my book, that every person who takes it is one, but the records clearly show that taking the fifth amendment is a direction of the Communist Party." (H. 59, p. 6315.)

Charlotte, 1956

Mr. Willis: Mr. Chairman, I would like to make this observation. The last three witnesses who have appeared before us all possessed university degrees, B.A.'s, Ph.D.'s and so on. Yet what is their occupation or their ostensible occupation? One said he was a sheet metal worker. The other one a fish scaler, and the present witness a meat clerk. Is that what they went to college for?

"The witness has refused, by invoking the privilege of the fifth amendment, to tell us whether, while engaged as a meat clerk, he is receiving income or sources of income from other entities. I think, Mr. Chairman, the conclusion is inescapable that these people are professional agitators, expert emissaries of the Communist conspiracy, planted in the Southland. Who said it couldn't happen here?" (H. 96, p. 3602.)

St. Louis, 1956

"Mr. Tavenner: Mr. Younglove further testified that while attending the party school, from October 1945, to February 1946, at 2851 Gravois, Douglas MacLeod was an instructor at the school and stated

in the course of a lecture that socialism would never come about by the use of the ballot box. We would have to use violent force and action.

"Did you make any such statement as that in the course of your lecture or did you say that in substance to the group?

"Mr. MacLeod: Well, I would like to ask you, Mr. Tavenner, if you think it is conceivable that I could have said something like that.

"Mr. Tavenner: I haven't known you as long as Mr. Younglove has.

"Mr. Moulder: That is not responsive to the question.

"Mr. Scherer: I ask you direct the witness to answer.

"Mr. Moulder: The witness is directed to answer.

"Mr. Scherer: You have an opportunity now to deny it.

"Mr. MacLeod: A trap, Mr. Scherer, a trap.

"I assert all of the constitutional grounds I have previously asserted.

"Mr. Scherer: That would lead me to believe then that Younglove was telling the truth." (H. 100, p. 5078.)

Washington, D.C., 1960

"Mr. Arens: Mr. Witness, there is pending before this committee some legislation. We are very happy to have you here because we think your testimony will help us consider this legislation. It appears on this record that there were a number of conspirators, agents of a foreign power, who were screened off of merchant vessels by the Coast Guard. Thereafter, because of a series of judicial opinions, the Coast Guard has now been forced to reissue seamen's papers to a number of these Communists. Following a series of decisions which interpreted a California code enabling the California authorities to attempt to preclude from employment Communists in the State government, Congressman Walter, the chairman of

this committee, introduced a bill, H.R. 11580, which is pending before this committee. This bill provides that if a person who seeks seaman's papers is subpenaed before the Coast Guard or other Federal agencies, and interrogated and refuses to answer certain questions, that individual cannot be issued seaman's papers.

"We want to test this out with you and see how it would work for the benefit of the committee and the benefit of the record. This bill provides, and I am reading now from section 3B—I assume that your appearance will do just what you said at the meeting, help educate the committee — section 3B provides: 'No individual who willfully fails or refuses to appear before any Federal agency, when subpenaed or ordered to appear, or to answer under oath before such Federal agency any question concerning three items, shall be issued seamen's papers.'

"I am going to ask you those three questions.

"Mr. Goodman, are you a member of the Communist Party? Please answer that question. Under this bill, if enacted into law, you can't get seaman's papers if you don't answer that question. Please answer that question. Are you a member of the Communist Party?

"Mr. Goodman: The fact of the matter is that the bill is not a law yet." (H. 139, p. 1811.)

Unfriendly witnesses are often recalled as witnesses.

Following is a partial list of unfriendly witnesses who declined to answer substantially all accusatory questions during their first appearance and were nevertheless subsequently called and asked questions of similar import although there was no reason to believe they would be cooperative on a second (or in some cases, third) appearance.

Name	*First Appearance* Hearing No.	*Second Appearance* Hearing No.	*Third Appearance* Hearing No.
John J. Abt, Esq.	19	18	
Harold Buchman, Esq.	47	114	
John Caughlan, Esq.	59	107	
Martin Chancey	exec. sess. (see H. 153, p. 1120)	153	
Homer Chase	121	144	
Michael Crenovich	134	154	
Byron T. Darling	63	69	
Frank Donner, Esq.	94	125	
Eugene Feldman	96	122	
Dorothy Friedman	121	127	
John A. Johnson	137	157	
Joseph P. Henderson	47	114	
Clarence Hiskey	20	23	
Leo Huberman	154	157	
Frank Ilchuk	101	107	
Fred Jerome	130	157	
Irving Kaplan	56	142	
Milton Kestenbaum	4	78	
Irving Kandel	47	114	
Estelle Laba	90 (5/55)	90 (7/57)	
Hyman Lumer	108	125	130
Bocho Mircheff	101	127	
Steve Nelson	16	27	125
Herbert Nichol	47	114	
Russell Nixon	64	107	142
Stanley Nowak	107	127	
Hunter Pitts O'Dell	122	130	
Aaron Ostrofsky	47	114	

Name	*First Appearance* Hearing No.	*Second Appearance* Hearing No.	*Third Appearance* Hearing No.
Victor Perlo	19	94	127
Frank Pestana, Esq.	52	78	
John W. Porter, Esq.	52	125	
Thomas Quinn	30	125	
Samuel Richter	105 (9/56)	105 (2/57)	
Allan Rosenberg, Esq.	56	94	
Rose Rosenberg, Esq.	52	157	
Don Rothenberg	85	93	
Annette Rubinstein	101	142	
Joseph C. Scioli	117	161	
Milton Seif	47	114	
Esther Shandler, Esq.	52	107	
Myron E. Sharp	82	150	
Gale Sondegaard	43	103	
Harry Steinmetz	45	91	
Pauline Taylor	108	153	
Helen Travis	39	157	
Frank Wilkinson	107	122	
Levy Williamson	47	114	
Nathan Witt, Esq.	19	94	
Leroy Wolins	130	150	
Edward A. Wolkenstein	117	161	
William H. Wood	47	114	
Miroslaw Zelman	117	161	
Perry Zimmerman	90 (5/55)	90 (7/57)	

The Committee persists in interrogating unfriendly witnesses despite their refusals to testify.

The Zeisel study demonstrates that most unfriendly witnesses answer no questions or few questions about allegedly subversive activities. (See Appendix 5, pp. 7-10.) It is commonplace that the Committee puts a line of defamatory questions despite the witness' continued declinations to testify. (See Appendix 5, p. 8.) The Committee moreover does so despite express statements by the witness that no further such questions will be answered.

For example:

San Francisco, 1957

"Mr. Sarvis: Twice within the last five minutes I have made my position clear. It is a position which I take on advice of counsel to protect myself; counsel advises me that I would be in trouble regardless of how I answer this question, that I must take the Fifth Amendment and any further questioning or implications along this line obviously are only going to find the same answers from me and could only serve the purpose I have mentioned, public embarrassment and threat to employment." [The Committee continued to put defamatory questions.] (H. 115, p. 1200.)

Washington, D.C., 1961

"Mr. Nixon: . . . and I will for the same reason refuse to answer other questions that I deem to be of the same character.

"I should like to say in conclusion that when and if you ask further questions of this nature, and I say I decline for the reasons already stated, I have reference to all of the reasons that I have just described to you.

"Mr. Scherer: Now, Witness, are you still a member of the Communist Party?

"Mr. Nixon: Did you hear my statement just now, Mr. Scherer?

* * *

"The Chairman: Answer the question.

"Mr. Nixon: Well, the reason I ask whether you heard my statement is because it is a categorical refusal to answer all such questions, and there should be no question in your mind that I am going to answer that question, I refuse to answer for all of the reasons that I have just described.

"Mr. Tavenner: Were you a member of the Communist Party in 1958, the year of the publication of the Statement of the Awards Committee?

Mr. Nixon: You are wasting your time. I am not going to answer your question. * * * *

Mr. Tavenner: It is noted that the address given of the office for The Fund for Social Analysis is Room 2800, 165 Broadway. Have you met with the officers of this association at that address? * * * *

"Mr. Nixon: As I said before, I am not going to answer any questions regarding the Fund.

"Mr. Tavenner: Then you refuse to answer. And I am going to continue to ask the questions that you ought to be asked. * * * *

"Mr. Nixon: You understand what I said?

"Mr. Tavenner: I understand what you said, but I always live in hopes that a person may change his mind, even you, Mr. Nixon." (H. 142, p. 68.)

The Committee, frequently, invites or expressly permits the witness to express his grounds for refusal to testify in a shortened form.

Washington, D.C., 1961

"Mr. Aptheker: My answer is the same, and is it necessary for me to repeat the entire phraseology?

"Mr. Tavenner: No, it is not; if you say 'on the same grounds', I think that the Chairman will accept that." (H. 142, p. 82.)

Minneapolis, 1964

"Mr. McDonald: I respectfully decline to answer this question on the grounds that any answer given may incriminate me or may violate my rights under the first, the fifth, or the sixth amendment of the United States Constitution.

"Mr. Nittle: Now, Mr. McDonald, I think if you choose to invoke those reasons for your refusal to respond to future questions, you may simply state that you will refuse to respond for the same reason." (H. 163, p. 1783.)

Chicago, 1965

"Mr. Diskin: I decline to answer that question on the following grounds—

"The Chairman: Would you say on the grounds previously advanced?" (Ex. 50, p. 410.) (See also H. 82, p. 5407; H. 155, p. 2102.)

INJURY TO UNFRIENDLY WITNESSES AND PERSONS NAMED IN TESTIMONY

Many persons who have been called as witnesses by the Committee, or who have been named in testimony by the Committee's friendly witnesses, have lost their jobs and suffered other forms of injury.

The Committee disclaims responsibility for such happenings. For example, Rep. Willis stated in New Haven in 1956 (H. 105, p. 5736):

> "Mr. Willis: Along that line, on the question of loss of employment, we read that people lose their jobs because they invoked the Fifth Amendment.
>
> "That is not an accurate statement. If anyone here loses his job as a result of his appearance before our committee, is it not more accurate to describe the situation, perhaps, that the employers so concluded because they were openly identified by live, true witnesses under oath as being, or having been, members of the Communist conspiracy, in addition to their invocation of the fifth amendment?"*

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* The Committee has been helpful to those who cooperate. "There are very few cooperative witnesses today who have come forward with their stories in honesty and in sincerity and with that quality of trustworthiness of which the chairman spoke yesterday who have not been received back and given every assistance in social and political rehabilitation." (H. 77, p. 3323.)

Seattle, 1954

"Mr. Jackson: I assume that the witness, Captain Strom [fire department captain], has taken into consideration the likely consequences of the position that he is taking here today. There may well be in the balance a very long and faithful service to the city of Seattle.

* * *

"Mr. Jackson: . . . from time to time the members of this committee have a very real feeling of regret when an individual in your position takes his career, weighs it in the scale of his mind, and decided that he is going to decline to assist the committee." (H. 59, pp. 6520, 6523.)

Some examples of reported injury follow:

Injury to persons named by Committee witnesses.

1950

Paul H. Morrison. Fired—Hanan Corp., Pittsburgh. ("Two Named by Cvetic as Reds Lose Job," *Pittsburgh Sun-Telegraph,* Mar. 9, 1950, p. 2).

Alice C. Roth. Fired—American Coin-A-Matic Machine Co., Pittsburgh; dismissed as grand juror. (Id.; "Red-Tainted Woman May Be Kept off Jury by Judge Musmanno," *Pittsburgh Post-Gazette,* Mar. 7, 1950, §2, p. 1; "Grand Juror 'Fired' as Red Files Appeal," *Pittsburgh Press,* Mar. 21, 1950, p. 1; *Pennsylvania ex rel. Roth* v. *Musmanno,* 364 Pa. 359, 72 A.2d 263 (1950)).

Nick Lazari. Option of denying charge of Communism or resigning, Local 237, Hotel and Restaurant Alliance AFL, Pittsburgh. ("Union Attacks Officers Called Red, Two Accused by Cvetic Told to Deny Charge Publicly or Resign," *Pittsburgh Post-Gazette,* Feb. 24, 1950, §2, p. 1).

George Nichols. Option of denying charge of Communism or resigning, Local 237, Hotel and Restaurant Alliance AFL, Pittsburgh. (Id.).

Mrs. Toni Nuss. Removed from welfare rolls, Pittsburgh. ("Red Mother Back on Relief Rolls," *Pittsburgh Press,* June 1, 1950).

Charles M. Kern, Jr., Barred from radio station WMCK, Pittsburgh as radio speaker. ("Radio Station Bars Speaker Named as Red," *Pittsburgh Post-Gazette,* Mar. 15, 1959, p. 1).

Hamp Golden. Removed as President of Canning Workers Local 325, Heinz Co., Pittsburgh; blackballed from veteran's organization; forced to move twice. ("Local Couple Acted as Commies for FBI, Probe Gets Story on Reds Here," *Pittsburgh Post-Gazette,* Mar. 11, 1959, p. 1; H. 125, p. 326).

John Bronich. Investigated by trial committee with possibility of ouster, Local 33, Office Employes International, Pittsburgh. ("'Red Scare' Probe Asked in Congress," *Pittsburgh Press,* Mar. 22, 1950, p. 8).

Max Mandel. Fired, Pittsburgh Symphony; expelled from A. F. of L. American Federation of Musicians and Pittsburgh Musical Society, Local 60. ("Music Union Ousts Suspected Red," *Pittsburgh Press,* Mar. 16, 1950, p. 1).

Hymen Schlesinger. Charges by Bar Association leading to disbarment, Pittsburgh; later reversed. (*In re Schlesinger,* 404 Pa. 584, 172 A.2d 835 (1961)).

Steve Nelson. Denaturalization proceedings. ("Deportation faces 20 Reds Cvetic Named," *Pittsburgh Press,* Mar. 16, 1950, p. 1; *United States* v. *Nelson,* No. 12211 (W.D. Pa.)).

Anna Devunich. Denaturalization proceedings. (*United States* v. *Devunich,* No. 12230 (W.D. Pa.)).

Alex Roth Rakosi. Denaturalization proceedings. (*United States* v. *Rakosi,* No. 12231 (W.D. Pa.)).

Brinley True. Denaturalization proceedings. (*United States* v. *True,* No. 12232 (W.D. Pa.)).

Steve Devunich. Denaturalization proceedings. (*United States* v. *Devunich,* No. 12229 (W.D. Pa.)).

Steve Paich. Denaturalization proceedings. (*United States* v. *Paich,* No. 12566 (W.D. Pa.)).

Katherine Kemenovich. Denaturalization proceedings. (*United States* v. *Kemenovich,* No. 12597 (W.D. Pa.)).

Andrew Onda. Harassment of man with same name as person named by witness. ("Unfortunately There Are Two Andrew Ondas", *Pittsburgh Press,* March 19, 1950, p. 17.)

1952

Russel J. Kitto. Ejected from Cadillac plant, Detroit. ("Union Aid is Ejected at Cadillac," *Detroit News,* Mar. 4, 1952).

Herman Burt. Ejected from Midland Steel Products Co., Detroit. (Id.).

Van A. Brooks. Co-workers at Chrysler Jefferson Plant, Detroit refused to work with him. (Id.).

Leon England. Co-workers at Kercheval plant, Detroit, refused to work with him. (Id.).

George Burt. Co-workers at Midland Steel Products, Detroit, refused to work with him. ("Workers Allow 2 Accused Reds to Return," *Detroit News,* Mar. 10, 1952).

Fred Fische. Co-workers at General Motors Transmission Division, Detroit, refused to work with him. (Id.).

Mr. X. Ejected from Chrysler Jefferson plant, Detroit. (*In re Chrysler Corp., Chrysler-Jefferson Plant & UAW, Local 7 (CIO)*, 19 Lab. Arb. 408 (1952)).

Gustave Jurist. Steps taken to oust from Detroit Public Housing. ("Housing Chiefs Check Tenants with Red List," *Detroit News,* Mar. 1, 1952, p. 16).

Jules Yanover. Fired from Detroit Symphony Orchestra. ("Symphony Violinist is Suspended," *Detroit Times,* Feb. 27, 1952, p. 1).

1954

Jean L. Asselin. Fired, Fisher Body Plant 1, GM, Flint. ("Fisher Body Woman Loses Job," *Flint Journal,* July 29, 1954, p. 4).

Lee Salk. Fired, State Mental Health Department. ("Firing of Reds Tough in Michigan," *Flint Journal;* July 31, 1954).

William Andrew Record. Fired, Detroit. (H. 55, p. 2907).

1967

Joe Uris. Telephone threats, Portland, Oregon. ("Uris Reports Phone Threat," *Oregonian,* Apr. 16, 1967).

Injury to unfriendly witnesses before their testimony.

1951

Michael Wilson. Movie writer, fired, Hollywood. (H. 43, p. 1675, *Wilson et al.* v. *Loews, Inc.,* 142 Cal. App.2d 183, 298 P.2d 152 (1956), *cert. dismissed,* 355 U.S. 597 (1958)).

1953

James F. Wood. Fired, Bechtel Corp., San Francisco. (H. 77, p. 3243).

Van Frederick. Fired, Bechtel Corp., San Francisco. (H. 77, p. 3241).

Mildred Bowen. Fired, San Francisco. (H. 77, p. 3351).

1954

Tom Ellis Bryant. Fired, Motor Carrier Central Freight Assoc., Detroit. (H. 82, p. 5057).

*James Zarichny.** Fired, Chevrolet Manufacturing Plant 5, Flint. ("Zarichny Gets Fired From Chevrolet Plant," *Flint Journal,* July 22, 1954).

*Charles Schinn.** Ejected, Fisher Body Plant 2, Flint. ("Shop Worker Tossed Out," *Flint Journal,* May 17, 1954).

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* Never called to stand.

Paul Joseph. Co-workers refused to work with him, Chevrolet Manufacturing, Flint. (Id.).

John Caughlan, Esq. Anonymous profane phone calls to office of witness and Bar Association; injury to law practice. (H. 59, p. 6565).

1956

John V. Myers. Fired, Campbell College, Buies Creek, North Carolina. (H. 96, p. 3523).

William Evans. Fired, White Furniture, Co., Hillsboro, N.C. (H. 96, p. 3533).

1957

William K. Sherwood. Research scientist, committed suicide.** ("Suicide Brings Attack on Inquiry," *San Francisco Chronicle,* June 18, 1957, p. 1).

** Excerpts from statement of William K. Sherwood Regarding His Being Subpoenaed to Appear Before A Subcommittee of the House Committee on Un-American Activities at San Francisco on June 18, 1957: " . . . I resent the intrusion of the House Un-American Activities Committee [into my work]. . . . More than this, the Committee's action may also result—in fact, I think this is unquestionably intended to result—in depriving me of my employment and hence of the opportunity to continue my researches. . . . [The Committee's] trail is strewn with blasted lives, the wreckage of useful careers. Scientific workers especially have felt the blast of the Committee's blunderbuss. . . . It is not only that numerous scientific workers have been denied the right to work in the fields in which they are qualified. Outweighing this is the sobering fact that the scientific mind, the mind which is dedicated to the quest for truth, cannot flourish in an atmosphere of fear, timidity and imposed conformity." (Unpublished statement in Library of International Longshoremen's and Warehousemen's Union, San Francisco, California. See also New York Times, June 18, 1957.)

1958

Dr. Elias Snitzer. Fired, Lowell Technological Institute. ("Two Are Suspended in Red Probe Call," *Boston Herald,* Mar. 15, 1958, p. 1).

David Murray Fine. Fired, Lowell Technological Institute. (Id.).

1959

Clara Hutcherson Saba. Fired, Roanoke, Va. (H. 122, p. 2648).

1960

Evelyn Schoenfeld. Fired, Whittier-University Elementary School, Berkeley. ("Board will not Rehire 2 Teachers," *Berkeley Gazette,* May 3, 1960, p. 1; "Two City Teachers Subpoenaed, Fired," *Daily Californian,* May 4, 1960).

Jack Schratter. Fired, Garfield Junior High School, Berkeley. (Id.).

Six teachers. Forced to resign or dismissed, San Francisco area. ("6 Coast Teachers Forced to Resign, California School Boards Act in Wake of House Inquiry into Red Activities," *New York Times,* Mar. 19, 1960; "Suspect Teachers Still Have Credentials," *San Francisco Chronicle* Apr. 27, 1960, p. 7).

Harold Collins. Fired, Union High School, Huntington Beach. (*Huntington Beach Union High School* v. *Collins,* 202 Cal.App.2d 677, 21 Cal. Rptr. 56 (1962), *cert. den.,* 371 U.S. 904 (1962).)

1961

Martin Chancey. Translating business ruined twice. (H. 153, p. 1120).

1966

Stephen Smale. Delay and reduction of federal research grant. "Roudebush v. Smale: Should Politics Sway Grants?", *Scientific Research,* Sept., 1967, pp. 15-16; 14 *Notices Amer. Math. Soc.,* 778 (1967); 15 *Id.* 49-52, 297 (1968).)

Injury to unfriendly witnesses following appearance before Committee.

1947

Adrian Scott. Producer, fired. (John Cogley, *Report On Blacklisting,* vol. 1, Fund for the Republic (1956), p. 23).

Edward Dmytryk. Director, fired. (Id.).

Lester Cole. Writer, fired. (Id.).

Ring Lardner, Jr. Writer, fired. (Id.).

Dalton Trumbo. Writer, fired. (Id.).

John Howard Lawson. Writer, blacklisted. (Id.).

Albert Maltz. Writer blacklisted. (Id.).

Alvah Bessie. Writer, blacklisted. (Id.).

Samuel Ornitz. Writer, blacklisted. (Id.).

Herbert Biberman. Writer-Director, blacklisted. (Id.).*

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* In November, 1947, shortly after the appearances and contempt citations of these ten unfriendly witnesses, 50 members of the Motion Picture Association of America, the Association of Motion Picture Producers and the Society of Independent Motion Picture Producers met in New York City and issued a statement that they would discharge without compensation and not re-employ any of the "Hollywood Ten", ". . . until such time as he is acquitted or has purged himself of contempt and declares under oath that he is not a Communist." They went on to state that "we will not knowingly employ a Communist or a member of any party or group which advocates the overthrow of the Government of the United States by force or by any illegal or unconstitutional methods." Cogley, *Report, supra,* vol. 1, p. 22. This action began official blacklisting in Hollywood and in the radio and television industries in New York, freezing out of the entertainment and communications industries persons who had been named as Communists by friendly witnesses before the Committee or who had themselves appeared before the Committee and refused to answer questions concerning political associations or beliefs.

In *Cole* v. *Loew's Inc.,* 8 F.R.D. 508, 523 (S.D. Cal. 1948), *rev'd,* 185 F.2d 641 (9th Cir. 1950), the court found that agents or investigators of the Committee insisted to film executives that certain Hollywood writers (including Lester Cole) should be discharged.

In 1950, *Red Channels,* published by a private organization known as Counterattack, listed approximately 150 persons in entertainment and communications, juxtaposing their names against defamatory materials primarily from Committee hearings and reports. This list became the semi-official handbook for blacklisting. *Red Channels, The Communist Influence In Radio And Television,* Counterattack, New York, 1950. In Committee Annual Reports for 1952 and 1953, a list of 324 names cited by friendly witnesses was published. All were blacklisted from the Hollywood studios. Cogley, *Report, supra,* vol. 1, p. 97.

Blacklisting continued throughout the 1950's. See Cogley, *Report, supra,* vols. 1 and 2; *Wilson* v. *Loew's, Inc.,* 142 Cal. App.2d 183, 298 P.2d 152 (1956), *cert. dismissed,* 355 U.S. 597 (1958) (A

1950

Esther Tice. Ejected, and fired, Formica Plant, Cincinnati. ("Accused Red Asks NLRB Aid," *Cincinnati Enquirer,* Aug. 8, 1950, p. 1).

1952

John Cherveny. Ejected, American Metal Products Co., Detroit. ("Protection Demanded by Accused Red," *Detroit Times,* Feb. 27, 1952).

Joseph Bernstein. Fired, Detroit News. ("Artist Called Red Loses Job on Paper," *New York Times,* Feb. 28, 1952).

Elinor Maki. Fired, art teacher, Detroit Board of Education. (Id.).

Lorraine F. Meisner. Suspended, student, Wayne University. ("Red Hearings Bring Suspension," *Detroit Free Press,* Feb. 29, 1952).

Mr. X. Fired, Chrysler Corp., Dodge Main Plant. (*In re Chrysler Corp., Dodge Main Plant & UAW Local 3 (CIO)* 18 Lab. Arb. 836 (1952)).

Two editorial writers. Fired, Los Angeles Daily News. (*In re Los Angeles Daily News & American Newspaper Guild, Los Angeles Newspaper Guild) (CIO),* 19 Lab. Arb. 39 (1952)).

Francis W. McBain. Employment difficulties between 1952 and 1959. (H. 128, p. 603).

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tort action by 23 blacklisted plaintiffs against a number of film distributors and producers and two members of the House Committee on Un-American Activities, for joining and agreeing to refrain from employing any persons who had refused to answer questions before the Committee concerning political belief and associations, or had been named as Communists before the Committee).

1953

Byron Thorwell Darling. Fired, Ohio State University. ("OSU Professor Defies Quiz; Suspension is Ordered by Bevis," *Columbus Evening Dispatch,* Mar. 13, 1953, p. 1).

Janet Scott. Fired, Knickerbocker News. ("Albany Reds Few, House Group Hears," *New York Times,* July 17, 1953).

Samuel M. Kaplan. Fired, Philadelphia Board of Education. (*Kaplan* v. *Board of Public Education School District of Philadelphia,* 179 Pa. Super. 88, 113 A.2d 164 (1955), *aff'd* 388 Pa. 213, 130 A.2d 672 (1957)).

Herman A. Beilan. Fired, Philadelphia Board of Education. (*Beilan* v. *Board of Public Education School District of Philadelphia,* 386 Pa. 82, 125 A.2d 327, *aff'd* 357 U.S. 401 (1958)).

Sadie T. Atkinson. Fired, Philadelphia Board of Education. (*Board of Public Education School District of Philadelphia* v. *Intille,* 401 Pa. 1, 163 A.2d 420, *cert. denied,* 364 U.S. 910 (1960)).

Thomas Deason. Fired, Philadelphia Board of Education. (Id.).

William G. Solar. Fired, Philadelphia Board of Education. (*Board of Public Education, School District of Philadelphia* v. *Solar,* 406 Pa. 168, 176 A.2d 653 (1961)).

Theodore S. Polumbaum. Fired, United Press. (*In re United Press Ass'n & American Newspaper Guild (CIO),* 22 Lab. Arb. 679 (1954)).

John W. Mass. Fired, City College of San Francisco. (*Board of Education of San Francisco Unified School District* v. *Mass.,* 47 Cal. 2d 494, 304 P.2d 1015 (1956); *Mass.* v. *Superior Court,* 197 Cal. App.2d 430, 17 Cal. Rptr.

549 (1961); *Mass* v. *Board of Education San Francisco Unified School District,* 61 Cal.2d 612, 394 P.2d 579, 39 Cal. Rptr. 739 (1964)).

1954

Dr. Gerald Harrison. Fired, Wayne State University. ("Two Wayne Professors Won't Say if They're Red," *New York Times,* May 4, 1954; "Clardy Investigation Turns to Communist Labor Infiltration," *Flint Journal,* May 4, 1954).

Dr. Irving Stein. Fired, Wayne State University. (Id.).

Mervin Engle. Fired, Chevrolet Mfg. Plant, Flint. ("Shop worker tossed Out, Fisher Man Roughed Up As a 'Red,' " *Flint Journal,* May 17, 1954).

Howard Falk. Fired, Buick Dynaflow, Flint, ("UAW-CIO Drops Grievances in Case of Two Alleged Reds," *Flint Journal,* June 19, 1954).

Sherwood Baumkel. Threatened by co-workers, Buick, Flint. ("Third Hearing Witness Fired," *Flint Journal,* June 2, 1954).

Murray Borod. House stoned, red paint thrown at home, Flint; fired, Chevrolet Manufacturing. ("Red Suspects' Windows Stoned," *Flint Journal,* May 19, 1954; "Fifth Alleged Communist Fired by GM," *Flint Journal,* June 22, 1954).

Jacob Moscou. Fired, Chevrolet Manufacturing Plant 5, Flint; grievance dropped by union. ("Sixth Alleged Red Fired from GM Job," *Flint Journal,* July 12, 1954; "Union Drops Moscou Case," *Flint Journal,* July 16, 1954).

Martin Trachtenberg. Fired, Buick, Flint. ("Union Drops Moscou Case," *supra*).

William Van der Does. Fired, Fisher Body Plant 1, Flint; car stoned. ("Van der Does' Car Stoned", *Flint Journal,* July 9, 1954).

Howard Foster. Assaulted, Flint. ("Another Shop Man Attacked at Chevrolet," *Flint Journal,* July 1, 1954).

Mark Nickerson. Fired, University of Michigan. (44 AAUP Bull. 53-101 (Mar. 1958).)

Horace Chandler Davis. Fired. University of Michigan. (Id.).

Dr. X. Fired, University of Michigan. (Id.).

Stanley William Moore. Fired, Reed College. (Id., pp. 102-36).

Sophie Elfont. Fired, Philadelphia Board of Education. ("4 Out in Red Inquiry, More Dismissals in Philadelphia Bring Total to 14," *New York Times,* May 4, 1954).

Caroline K. Perloff. Fired, Philadelphia Board of Education. (Id.).

Samuel Drasin. Fired, Philadelphia Board of Education. (Id.).

Eleanor Fleet. Fired, Philadelphia Board of Education. (Id.).

Angela Intille. Fired, Philadelphia Board of Education. (*Board of Public Education School District of Philadelphia* v. *Intille, supra.*)

Goldie Watson. Fired, Philadelphia Board of Education. (*Board of Public Education School District of Philadelphia* v. *Watson,* 401 Pa. 62, 163 A.2d 60; *cert. denied,* 364 U.S. 910 (1960)).

Herbert Salter. Fired, Worthington Corp., Holyhoke, Mass. (*U. E.* v. *Worthington Corp.,* 236 F.2d 364 (1st Cir. 1955).)

Frank Parker. Fired, Worthington Corp., Holyhoke, Mass. (Id.).

Joseph Stern. Fired, J. H. Day Co. (*In re J. H. Day Co. & Local 766* (Ind.), 22 Lab. Arb. 751 (1954)).

Lee Lorch. Fired, Fiske University. (45 AAUP Bull. 27-46 (Spring, 1959)).

1955

Estelle Laba. Fired, Newark Board of Education. (*Laba* v. *Board of Education of Newark,* 23 N.J. 364, 129 A.2d 273 (1957); H. 90, p. 1368).

Robert Lowenstein. Fired, Newark Board of Education. (*Lowenstein* v. *Newark Board of Education,* 35 N.J. 94, 171 A.2d 265 (1961)).

Perry Zimmerman. Fired, Newark Board of Education. (*Zimmerman* v. *Board of Education of Newark,* 38 N.J. 65, 183 A.2d 25 *cert. denied* 371 U.S. 956 (1963); H. 90, p. 1373; "This Fifth Amendment Club Included 3 Teachers," *Newark Star Ledger,* May 20, 1955, p. 1).

Andries Deinum. Fired, University of Southern California. (44 AAUP Bull. 151-7 (March, 1958)).

1956

Arthur Globe. Fired, Los Angeles County (social worker). (*Globe* v. *Los Angeles,* 163 Cal.App. 2d 595, 329 P.2d 971 (Dist. Ct. App. 1958) *aff'd* 362 U.S. 1 (1960)).

HYK. Fired, Republic Steel Youngstown. (*In re Republic Steel Corp., Corrigan-McKinney Plant & United Steelworkers, Local 1098,* 28 Lab. Arb. 811 (1957)).

Laurent R. LaVallee. Fired, Dickinson College. (44 AAUP Bull. 137-50 (March, 1958). (Committee staff informed College President prior to testimony).)

1957

Benjamin Fino. Fired, Bethlehem Steel, Baltimore; union refused to bring grievance proceedings. ("Bethlehem to Fire Six," *Baltimore Sun,* May 10, 1957, p. 1; *Ostrofsky* v. *Maryland Employment Security Board,* 218 Md. 509, 147 A.2d 741 (Ct. Ap. 1959); *Ostrofsky* v. *United Steelworkers of America,* 273 F.2d 614 (4th Cir., 1960) *cert. denied,* 363 U.S. 849 (1960)).

Joseph P. Henderson. Fired, Bethlehem Steel, Baltimore; union refused to bring grievance proceedings. (*Ostrofsky* v. *USW, supra; Baltimore Sun, supra; Ostrofsky* v. *Md. Bd., supra*).

Levi Williamson. Fired, Bethlehem Steel, Baltimore; union refused to bring grievance proceedings. (*Baltimore Sun, supra).*

William H. Wood. Fired, Bethlehem Steel, Baltimore; union refused to bring grievance proceedings (*Ostrofsky* v. *USW, supra, Baltimore Sun, supra; Ostrofsky* v. *Md. Bd., supra).*

Aaron Ostrofsky. Fired, Bethlehem Steel Baltimore; union refused to bring grievance proceedings; denied unemployment compensation. (*Ostrofsky* v. *VSW, supra; Ostrofsky* v. *Md. Bd., supra; Baltimore Sun, supra.)*

Milton Seif. Fired, Bethlehem Steel Baltimore; union refused to bring grievance proceedings; denied unemployment compensation. (*Baltimore Sun, supra, Ostrofsky* v. *Md. Bd., supra*).

Irving Spector. Fired, and ejected, Bethlehem Steel, Baltimore; union refused to bring grievance proceedings.

("Coworkers Shun Balker" *Baltimore Sun,* May 9, 1957, p. 1; *Baltimore Sun, supra*).

Jeanette K. Fino. Fired, waitress, Baltimore; denied unemployment compensation. (*Fino* v. *Maryland Employment Security Board,* 218 Md. 504, 147 A.2d 738 (Ct. App. 1959)).

Mr. X. Fired, Capital Airlines. (*In re Capital Airlines, Inc., & International Association of Machinists; District 144,* 30 Lab. Arb. 836 (1958)).

Jack Eshleman. Fired, San Francisco Examiner. (*In re Hearst Publishing Co., San Francisco Examiner Division & American Newspaper Guild, Local 52,* 30 Lab. Arb. 642 (1958)).

Stanley Michalowski. Fired, Pratt & Whitney, New Haven. (*In re Pratt & Whitney Co. & UAW Local 405,* 28 Lab. Arb. 668 (1957)).

Julian Chazin. Fired, Bethlehem Steel, Buffalo; union refused to bring grievance proceedings. ("Steel Locals Won't Back Five Suspended Workers," *Buffalo Courier-Express,* November 25, 1957; "Bethlehem Upholds Firing of Five Named at Hearing," *Buffalo Courier-Express,* Dec. 12, 1957).

Everett S. Jones. Fired, Bethlehem Steel, Buffalo; union refused to bring grievance proceedings. (Id.).

Sam Brook. Fired, Bethlehem Steel, Buffalo; union refused to bring grievance proceedings. (Id.).

Miroslaw Zelman. Fired, Bethlehem Steel, Buffalo; union refused to bring grievance proceedings. (Id.).

Edward A. Wolkenstein. Fired, Bethlehem Steel, Buffalo; union refused to bring grievance proceedings. (Id.).

Floyd Fried. Fired, Westinghouse Electric Corp, New York. (*Carey* v. *Westinghouse Electric Corp.,* 6 N.Y.2d 934, 190 N.Y.S.2d 1003 (1958); *In Re Westinghouse Electric Corp. & Eectric Workers Union, Locals 315 & 1581,* 35 Lab. Arb. 315 (1960)).

Vincent Pacile. Fired, Westinghouse Electric Corp., New York (Id.).

James Annaccone. Fired, Westinghouse Electric Corp., New York (Id.).

1958

Joseph Papp. Fired, CBS. ("A Dubious Path," *Boston Herald,* June 25, 1958).

Charles Dubin. Fired, NBC. (Id.).

1959

Alexander Staber. Attempt to oust from public housing. ("Commie 'Boss' Free-Rides Here," *Pittsburgh Press,* Mar. 12, 1959, p. 1).

Richard Reichard. Fired, George Washington University. (108 Cong. Rec. 23065-66 (1962); 48 AAUP Bull. 240-47 (Sept., 1962).)

1961

Rudolph W. Jones. Fired, WABQ radio, Cleveland. ("WABQ Fires Chief Engineer Jones," *Cleveland Press,* Oct. 30, 1961).

1964

Paul Sporn. Fired, University of Buffalo, (English instructor). ("Firing of 6 Witnesses at HUAC Probe Scored", *Buffalo Courier-Express,* June 10, 1964.)

Tobias Schwartz. Fired, Roswell Park Memorial Institute, Buffalo (Scientist). (Id.)

John Forichette. Fired, City Surveyor, Minneapolis. ("City Ousts Surveyor Cited as Red", *Minneapolis Morning Tribune,* July 10, 1964, p. 8.)

James A. Brown. Fired, Viking Chevrolet Co., Minneapolis; expelled, International Association of Machinists. ("Mechanic, Fired After HUAC Hearing, To Fight", *St. Paul Dispatch,* July 11, 1964; "Mechanic To Fight Ouster From Union", *Minneapolis Star,* Aug. 12, 1964.)

1965, 1967

Jeremiah Stamler, M.D. Threats of violence, Chicago. ("Guard Stamler After Threats", *Chicago's American,* May 29, 1965, p. 1). Inactive status, salary in escrow, Chicago Board of Health. (Director, Division of Adult Health and Aging and Heart Disease Control Program.) ("Dr. Stamler Placed on Inactive Status By City Health Board", *Chicago Sun-Times,* July 20, 1967, p. 8.)

TREATMENT OF ATTORNEYS

During the hearings held in Chicago in May, 1965, counsel for plaintiffs were physically mistreated and threatened with forcible removal from the hearing room. In previous hearings, other lawyers in other cities have been verbally and physically mistreated, impairing the witness' right to assistance of counsel. For example:

San Francisco, 1953

Following is a statement made to the Committee by attorney Robert Treuhaft:

"Mr. Treuhaft: I am obliged to appear before this committee without assistance of counsel, Mr. Tavenner, because of the fact that the repressive activities of this committee have made it impossible for me to secure the assistance of attorneys of my choice. This is a serious charge for a lawyer to make. I am compelled, however, to make it because the state of affairs that I have found to exist in this regard is truly shocking.

"A month ago I received a subpena calling for my appearance before this committee. My law partner and I have been, for many years, and are now, general counsel for the East Bay Division of Warehouse Union Local 6, ILWU, a labor organization which is one of the principal targets under attack by this committee. In fact, I am sure this was well known to the committee's investigators, and I cannot down the suspicion that my representation of this union had something to do with the fact that my law partner and I are the only East Bay lawyers subpenaed before the committee at these hearings so far as I know.

"I readily agreed to represent four East Bay members of this union as their attorney, who likewise

were subpenaed, despite the fact that I, myself, had been subpenaed as a witness.

"Upon receipt of my subpena I immediately began to make diligent efforts to secure counsel to represent me. I compiled a list of the 7 leading East Bay lawyers whom I would want to represent me because of their known ability in their profession and because all of them had from time to time, shown themselves to be champions of the right of advocacy. All had a sound understanding of due process of law and of the other constitutional rights and immunities which are daily trampled upon by this committee.

"And I would like to say that in making these references to certain members of this committee I do not wish to reflect upon Congress as a whole, as some members of this committee have, by making accusations by inference against one of their own members.

"I have respect for elected Members of Congress, and I would not attack them by imputation or inference if I didn't know the facts.

• • •

"The first lawyer, whom I will call lawyer No. 1, holds high office in the Alameda County Bar Association. When I first approached this lawyer, he told me that he could see no reason why he could not represent me. The next day, however, he informed me that he felt that he could not do so because of the controversial nature and the publicity attendant upon hearings before this committee and because of his position in the county bar association.

"The second lawyer I consulted out of this list, lawyer No. 2, is a former judge who has an active practice on both sides of the bay. I discussed with him the position which I intended to take before this commit-

tee; that is, to uphold the Constitution and to rely upon the first and fifth amendments to the Constitution as they might apply to every question that this committee might put to me.

"This attorney, who is highly placed in the bar, agreed fully with me in principle and stated that it was his opinion that my decision was sound and wise. He told me that he would like to represent me.

"After conferring with his associates, however, he called me in again, and he said that he was very sorry that he could not because representing me with the attendant publicity or representing any witness before this committee would involve financial hardship. He said that he regretted very much to give me this answer because we have been on friendly terms. He said to me, although he is a well-established lawyer, and older than I am, 'Why don't you find some older lawyer, someone who is in a better financial position, to take this risk?'

"The third lawyer I went to see and offered a retainer to represent me before these hearings was an older lawyer; and he was a better financially established lawyer so far as I know. He formerly held high office in the American Bar Association, and he, too, has been a champion of the right of advocacy. He told me, 'Try to find a younger lawyer. The activities before this committee would be too strenuous,' he thought, the publicity would be harmful.

"The fourth lawyer I went to is a leading criminal lawyer in the East Bay. We have been on very friendly terms, and he readily agreed to represent me without any hesitation at all. When I offered him a retainer, he said that he would not accept a retainer from a fellow lawyer. He took the subpoena, and we pro-

ceeded to discuss the position I was going to take, and he agreed with me fully that anybody who had represented unpopular causes as a lawyer, as I have, would face grave dangers in answering any questions put by this committee. Three days ago I—I consulted him 2 weeks ago—3 days ago, the day before—3 days before I was supposed to come here, he called me, and told me that his partner had just returned from out of town and had learned that he had undertaken to represent me. He said that his partner represented a bank, and that his partner felt that the attendant publicity would be so harmful to them that he insisted that they could not represent a witness before this committee. He told me this with very personal regret. He also expressed the view—his partner did—that any attorney who represented a witness before this committee might find himself in a position where he was persecuted by other governmental agencies, as was Vincent Hallinan, against whom reprisals were taken, because he had the courage and temerity to represent a client who, in some eyes, was considered unpopular.

"Lawyer No. 5 is one of the most distinguished members of the bar of Contra Costa County. He has held high office in the bar association there, and he is a leading lawyer in every sense of the word. He has also been a fighter for the right of advocacy. He told me with very great regret that he had discussed with some of his corporate clients the advisability or his intention to represent a witness before this committee. These clients told him that they would consider it an unfriendly act if he were to represent a witness before this committee. He said that although he was well established, he had very high overhead and that he didn't want to subject his organization to the

financial hardship and risk of losing clients that would be involved in representing anyone before this committee. I told him that I intended to take this matter up with the bar association and also to make a statement to this committee on my experiences in attempting to obtain counsel, and that I intended to keep the names of the individuals that I had consulted confidential. He said, 'Bob, a fact is a fact. I feel rotten about telling you what I have to tell you, but a fact is a fact; you state the facts, and I authorize you to use my name and to give the reasons that I have given you.'

"This man had real courage.

"Mr. Scherer: He didn't appear, though, did he?

"Mr. Treuhaft: No; he authorized me to say that he couldn't appear because these slanderous accusations by committees like this made it dangerous financially.

"Mr. Scherer. That is the man you say had real courage?

"Mr. Treuhaft: Yes; he had real courage, and all of these lawyers that I named had real courage. I went to them because they were courageous. I am not condemning nor criticizing the lawyers. I am condemning this committee for trying its cases in the newspapers and over the radio. I am condemning this committee for depriving me of right to counsel by its slanderous attacks, attacks by inference, which even repel and revolt some of the Democratic members of this committee when they saw the performance that was put on today with respect to a Member of Congress.

* * *

"I also consulted a couple of other leading lawyers in the same category. These lawyers had reasons

which I respect, special reasons which I respect, for not wanting to be in this particular position at this time.

"However, their position was also connected with the fear of adverse publicity that would be attendant upon representing as counsel somebody before this committee.

"Now, the canon of ethics of the American Bar Association, as I think Representative Moulder has referred to, states, and this is law for lawyers, that no lawyer shall, for reasons personal to himself, reject any cause because it is unpopular. All of the lawyers that I consulted did reject this cause for reasons personal to themselves, but for reasons created by the hysteria engendered by this committee in the public mind, the fear that anybody who appears before this committee is labeled as a spy or something subversive, and that the taint may rub off onto the lawyer." (H. 77, pp. 3330-3.)

Michigan, 1954

An attorney was ejected from the hearing room because he attempted to read a prepared statement on behalf of his client. (H. 82, p. 5069.)

Washington, D.C., 1954

"Mr. Clardy: Well, I must say the chair is moved to say that today I have seen the worst type of legal advice given to witnesses appearing before us that I have ever heard before in all the time I have been on the committee." (H. 82, p. 5291.)

Charlotte, 1956

Eight of the nine witnesses represented by Rhoda Laks, a New York attorney, were asked in detail how they met and came to retain her. (H. 96, p. 3547, 3573, 3577, 3590,

3603, 3615-6, 3626, 3627-8.) Committee counsel asked one witness (H. 96, p. 3626):

"Can you tell this Committee and the people of this community while you are in a public session whether or not your counsel, Miss Laks, was sent here by the Communist conspiracy to tell you what to do?"

Los Angeles, 1956

Mr. Arens (Committee counsel), addressing Mr. John Porter, counsel for several witnesses:

"Comrade Porter, let's not have any further outbursts from you." (H. 107, p. 6768).*

"Mr. Arens: I suggest that Comrade Porter be admonished that if we have further outbursts of this kind he will be removed from the room." (Id., p. 6841.)

"Mr. Arens: Comrade Porter, you just read the rules on the ethics before this committee, and content yourself with that. We will take care of the proceedings here.

"Mrs. Doran [witness]: You said everyone would be courteous. My counsel's name is Mr. Porter, P-o-r-t-e-r.

"Mr. Arens: He has been identified as a comrade. One man was identified as a doctor of philosophy. So we called him a doctor. This man has been identified as a comrade.

"Mrs. Doran: For the record and in order to protect myself, I refuse to answer the question, if I can still remember it, by citing the first and fifth amendments. And I want everyone here to remember that my counsel's name is Mr. Porter. And I believe that is the way we address each other in this country.

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* See also H. 43, p. 1785; H. 82, p. 5448; H. 107, p. 6774.

"Mr. Arens: Do you address him in any other capacity any place else besides in public session?

"Mr. Porter: Just a minute.

"Mr. Doyle: Just a minute.

"Mr. Porter: I rise to a point of personal privilege, and charge that counsel is violating—

"Mr. Arens: I suggest that counsel submit himself to an oath if he wants to engage in these proceedings with reference to whether or not he is a comrade or, else, that he restrain himself and read the canon of ethics of the American Bar Association here, which, among other things, set high moral standards for practitioners of the law who are sworn to uphold the Constitution of the United States." (H. 107, p. 6849.)

Witnesses were asked if they knew their attorney, Mr. John Porter, was a member of the Communist Party. (H. 107, pp. 6698-99.) When one of the witnesses, Josephine Yanez Van Leuven, refused to answer this question, the Committee interrupted her testimony and called a friendly witness (Anita Schneider) who was asked:

"Mr. Arens: While you were in the Communist Party at the behest of the Federal Bureau of Investigation serving your Government, did you know a Communist by the name of John W. Porter?"

The witness answered in the affirmative and identified Mr. Porter. The Committee then resumed the questioning of Miss Van Leuven. (H. 107, pp. 6698-99.)

Three attorneys were ejected from the hearing room while their clients were testifying. The Committee nevertheless attempted to continue with the testimony. (H. 107, pp. 6771, 6851, 6859.)

When witness Carlisle was testifying, Committee counsel asked:

"Mr. Arens: Aside from any relationship of attorney and client, do you know or have you ever known as a Communist a person by the name of Robert L. Brock?" (H. 107, p. 6705.)

In the ensuing colloquy, the following occurred (H. 107, p. 6706):

"Mr. Arens: Have you [attorney Brock] ever been a member of the Communist Party?

"Mr. Brock: I am not under oath and I am not discussing the topic with you. Counsel's conduct is the most contemptible I have seen in a court, much less a hearing. You know it, Mr. Doyle [Committee member]. You know this is a theatrical thing designed to catch the press.

"Mr. Doyle: I would suggest this, as long as you have designated committee counsel as a liar—

"Mr. Brock: It is clear he is.

"Mr. Arens: Then stand up like a man and submit to an oath and tell the committee whether or not you have ever been a member of the Communist Party."

The Board of Governors of the State Bar of California conducted an official investigation into this hearing, and rendered the following report, published at 32 Journal of the State Bar of California, March-April, 1957, 117:

STATEMENT OF THE BOARD OF GOVERNORS

Through press reports and communications from several members of the bar the attention of the Board of Governors of the State Bar of California has been called to incidents occurring at a recent public hearing in Los Angeles, California, of a subcommittee of the Committee on Un-American Activities, the House of Representatives, U. S. Con-

gress. The Board has reviewed a reporter's transcript of that hearing and has heard a tape recording of the proceedings. The announced purpose of the hearing was to investigate opposition to the McCarran-Walter Immigration Act.

From the transcript and recording, the following facts appear:

1. Several witnesses were interrogated by the [sub]committee's counsel* as to whether they were or ever had been members of the Communist Party.

2. Each of the witnesses was represented by counsel.

3. Counsel appearing for the witnesses were not permitted to address the Committee or to make objections to the manner in which the proceeding was being conducted; but counsel were repeatedly told that "their sole and exclusive right was to advise their clients."

4. Several witnesses were asked if they knew as a Communist one of the lawyers appearing. That lawyer, apparently, was *not* one of the witnesses whom the Committee intended to call and interrogate.

5. The interrogation of one witness was interrupted so as to permit the hearing of the testimony of an under-cover member of the Communist Party. This under-cover member, in response to a question put by the [sub]committee's counsel calling for such an answer, testified that she knew one of the attorneys appearing for another witness as a Communist. Thereafter the attorney so identified was referred to by the [sub]committee's counsel as 'Comrade.'

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* Mr. Richard Arens, committee staff member who acted as counsel for the subcommittee in Los Angeles.

6. Counsel who insisted on making an objection for the record were ejected from the hearing room.

7. Counsel appearing for the witnesses were insistent upon their position and upon their right to make appropriate objections. They were not, however, disrespectful, unruly or boisterous.

This Board has heretofore affirmed that the right of a person to counsel requires public acceptance of the correlative right of a lawyer to represent and defend, in accordance with the standards of ethics of the bar, any client without having imputed to him his client's reputation, views or character. A similar affirmation has been made by the American Bar Association.

The right to be represented by counsel necessarily involves freedom of choice on the part of the client. Conduct on the part of any tribunal before whom a lawyer is entitled or permitted to appear, which attacks a lawyer's reputation or otherwise subjects him to obnoxious personal consequences, inevitably deters lawyers from accepting employment to appear before such tribunals. Thus the right to independent counsel of the client's own choice is seriously impaired.

It is the duty of every lawyer, to the faithful discharge of which he takes an oath, to abstain from all offensive personality.

In the opinion of the Board of Governors the proceedings of the [sub]committee and the conduct of the [sub]committee's counsel, to which reference is made above, were improper and lacking in the dignity and impartiality which should govern the conduct of agencies of the United States; they resulted in grossly offensive personality directed at counsel for witnesses; and they were of such a character as

to pose a threat to the right to appear by counsel and to the proper independence of the bar. It is, therefore,

RESOLVED: That copies of this statement be transmitted to the Speaker of the House of Representatives of the United States; to the Chairman and the Counsel of the House Committee on Un-American Activities; and to each Congressman and Senator from the State of California.

IT IS FURTHER RESOLVED that a copy of this statement be transmitted to the President of the American Bar Association with the request that the matter be appropriately considered by that Association with the end in view of formulating proposals to the Congress for a system of committee procedure which will adequately protect the right of witnesses and of counsel appearing for witnesses.

San Francisco, 1957

Representative Scherer attacked the Statement of the Board of Governors, quoted above, as "unwarranted and intemperate," and went on:

"Pseudo-left-wing liberals, who are always interested in protecting the sacred rights of the Communists who appear before our committee, were strangely silent about these demonstrations against the committee.

"You learn to expect this treatment from the agents of the Kremlin. You are shocked and disheartened when it comes from the board of governors of a State bar association." (H. 115, p. 1091.)

"The records of the hearings of this committee clearly indict those lawyers who are members of the Communist conspiracy and who have conducted themselves in the manner I have described. What the record does not show is the fact that some of these very lawyers

about whom I have been complaining have violated the basic duty and obligation of a lawyer, namely, to serve the best interests of his client. There have been occasions when it was obvious that it would have been to the best interests of the client to have coöperated with the committee; and yet when that witness employed a Communist lawyer or had an attorney furnished him by the Communist party, he was advised to take the fifth amendment, to his detriment. Why? Simply because the lawyer was serving the Communist Party rather than his client. I have often wondered why bar associations have failed to act in such cases." (H. 115, p. 1095.)

New Haven, 1957

Three witnesses were asked when, where and how they had met their attorneys, and whether "counsel [was] secured for you by a person who, to your certain knowledge, is a member of the Communist conspiracy?". (H. 105, p. 5634; see also pp. 5689-90, 5696.)

A witness refused upon advice of counsel to answer a question relating to activities which occurred more than ten years before, whereupon Mr. Kearny, a Committee member, said:

> "Regardless of what your counsel says on that score, we have the right to go back. He is giving poor advice if that is the advice of your counsel." (H. 105, p. 5651; see also H. 82, p. 5451; H. 127, p. 751.)

Pittsburgh, 1959

In Pittsburgh, Pennsylvania, in March, 1959, two FBI informers met with other witnesses while attorney Schlesinger advised them prior to their appearance before the Committee. Throughout the hearing the Committee sought to elicit the details of the conference. From the

first reference during the hearing as well as in the Committee's synopsis, the conference was characterized a Communist Party meeting. For example (H. 125, Synopsis p. 313):

> "Mr. and Mrs. Golden [the informers] attended a meeting of the Communist Party only 3 days prior to their appearance before the committee, in which meeting the members of the party discussed the evasion and sophistry they would employ in their appearance before the committee."

Testimony which characterized this professional conference as a Party meeting is found at pages 321-23, 367-69 and 480-81. Subpoenaed witnesses represented by Mr. Schlesinger were also questioned about the conference. (H. 125, pp. 349, 366-67, 369, 500.)

Chicago, 1959

When witness McBain read from a prepared statement, he was asked:

> "Mr. Arens: Was that statement prepared by any person known by you to be a member of the Communist Party?" (H. 128, p. 604; see also H. 105, p. 5639.)

San Francisco, 1960

> "Mr. Scherer: Mr. Chairman, I have been watching this counsel all day and it is counsel's fault. He has been putting words into the witnesses' mouths, who have testified before this committee, what they should say and how they should bait this committee, instead of advising them as to their constitutional rights. He is the one that should be censured." (H. 137, p. 2153.)

Washinton, D.C., 1962

> "Mr. Scherer: You indicated until you got to Washington that you were going to tell what you knew about Communist Party activities, did you not?

Mr. Cooper: No.

Mr. Scherer: You did not tell our investigator that you would cooperate with the committee? And testify?

(Counsel conferred with witness.)

The Chairman: Let the witness answer the question.

Mr. Cooper: I don't know whether I did or not.

Mr. Scherer: You do not deny that you did?

Mr. Cooper: I don't remember.

Mr. Scherer: You said that you did not need a lawyer. Did you not tell the member of our staff that you did not need a lawyer?

Mr. Cooper: He told me I didn't need a lawyer. I didn't know what I needed.

Mr. Scherer: Did he not ask you who your lawyer was? And you said you did not have a lawyer. You did not have a lawyer last week, when the member of our staff talked to you, did you?

Mr. Cooper: I didn't talk to him about no lawyer.

Mr. Scherer: Well, when did you get a lawyer?

(Counsel conferred with witness.)

Mr. Cooper: What is the pertinency of the question?

The Chairman: Because we are curious to know why you have changed your position, and whether you were advised not to cooperate with this committee after you had told one of our investigators, according to our information, that you would cooperate.

(Counsel conferred with witness.)

Mr. Cooper: I made up my mind to do the only thing I thought was in my rights, to protect myself.

Mr. Scherer: When did you make up your mind to do what you say you are doing now?

(Counsel conferred with witness.)

Mr. Nittle: Mr. Chairman, I ask that the record

note that counsel conferred with the witness prior to responding to this and the prior questions.

The Chairman: I do not think that makes any difference. It is perfectly apparent what is happening here. This man is not answering questions.

Mr. Scherer: His lawyer is answering them for him.

The Chairman: Yes. Proceed.

Mr. Nittle: Did any member of the Communist Party contact you, confer and consult with you, and advise you not to testify before this committee?

Mr. Cooper: I refuse to answer, on the grounds.

Mr. Nittle: Did any person known to you to be a member of the Communist Party advise you to come here and plead the fifth amendment to every question asked of you?

(Counsel conferred with witness.)

Mr. Cooper: I refuse to answer, on the grounds previously stated.

• • •

Mr. Scherer: It seems to me, Mr. Chairman, that Cooper had agreed to testify when he talked to our investigator about his activities in the Communist Party; and then, when the names were published in the Cleveland paper, the names of the witnesses who were subpenaed, it enabled someone from the Communist Party to contact Cooper. They found out that he had been subpoenaed, and then his mind was changed about his intentions.

Mr. Nittle: I might also add, Mr. Scherer, that the witness Cooper had told our investigator, Mr. Wetterman, that Frieda Katz had been to see him.

Mr. Scherer: That was at the time he left the party, about 10 years ago?

Mr. Nittle: Yes, sir.

Mr. Scherer: But what I am saying is that just recently he talked to Mr. Wetterman, and indicated, or not only indicated but said, that he would come before this committee and tell this committee about his associations in the party and what he knew about Communist Party activities in the Cleveland area. And that has just been recently. It was subsequent to his conversation with Mr. Wetterman that his name appeared, along with others, as a witness who had been subpeneaed before this committee today, and it is apparent to me what happened.

He does not come here with a Cleveland lawyer. He comes here with a Washington lawyer from the American Civil Liberties Union. Instead of keeping his promise or fulfilling his intentions, he refuses to testify; and it is apparent that after his name was published, somebody from the Communist apparatus got in touch with him and changed his mind." (H. 153, pp. 1014-16, 1027.)

Attorney Clement T. Cooper (not the same as the Mr. Cooper referred to above) appeared at this hearing on behalf of a client, and was engaged in the following colloquy:

"Mr. Nittle: Will counsel please identify himself for the record.

Mr. Cooper: My name is Clement Theodore Cooper. I am a member of the State Bar of Michigan and the District of Columbia. I am representing Mr. Tenenbaum through the American Civil Liberties Union as a volunteer attorney.

The Chairman: May I ask you whether or not you know that the purpose of your organization is the abolition of this committee, its stated purpose in its literature?

Mr. Cooper: I am not at liberty, Mr. Chairman, to give any information on that point, inasmuch as I am not a spokesman for the American Civil Liberties Union.

The Chairman: No, you are not a spokesman. I just wondered if you know that is the purpose of your organization and whether or not one of the things it is doing to bring this about is preventing witnesses from testifying.

Mr. Cooper: With all due respect to the chairman, I don't believe that that is a correct connotation or interpretation of the American Civil Liberties Union practice. Basically we are concerned with protecting the civil liberties of any persons where those liberties have been brought into question.

Mr. Scherer: Chiefly Communists, though, is it not?

Mr. Cooper: I would respectfully object to that question because, basically, I am not here as a subpenaed witness; number two, that it is repugnant to the very purpose why I am here. The American Civil Liberties Union does not support any particular movement. It is concerned with protecting the civil liberties of all persons. We do not inquire into the political or social beliefs of any person. We are concerned with his legal rights and his protection.

The Chairman: What about my civil liberties when I attempt to speak in New York and Los Angeles and have mobs there to try to prevent me? Does your organization ever raise its voice? I have the right to speak under the Constitution, just as well as your clients or other Communists. I never heard you raise your voice about that.

Mr. Cooper: That would be very true, Mr. Chairman. However, it is only a case where you seek the

help of the American Civil Liberties Union. In this case, Mr. Tennebaum has sought the American Civil Liberties Union help and that is the reason why I am here and that is the reason why we are part of these proceedings.

The Chairman: All right.

Mr. Scherer: The American Civil Liberties Union has appeared amicus curiae on behalf of Communist causes and individuals time and time again in courts in this country without any request when the Communists (under indictment) were represented by their own lawyers. You have voluntarily gone into court in support of Communist causes when you were not asked.

Mr. Cooper: It is not because of blanket association with communism, socialism, or any other type of ideology inasmuch as we are concerned with the protection afforded under the Constitution of the United States, these civil liberties.

Mr. Doyle: In other words, it is to protect the alleged liberties of a man or woman that is known to be part of the international Communist conspiracy to destroy this form of government.

Mr. Cooper: I would not go so far as to say that.

Mr. Doyle: The Supreme Court has said that is the purpose of the Communist Party of the United States—you know that—on June 5.

Mr. Cooper: I am quite aware of the Supreme Court ruling but we are departing from the very purpose of the American Civil Liberties Union, which was the original question asked by the chairman and by other members of the committee." (H. 153, pp. 1143-4; see also H. 174, pp. 1330-1.)

* * *

"Mr. Heller: Norman Heller, a member of the Bar of the District of Columbia, a volunteer for the American Civil Liberties Union.

"The Chairman: Mr. Heller, may I ask you: Are you aware of the type of people that you are representing here?

"Mr. Heller: I understand what they have been accused of by other people and I also understand that they have certain rights which I have advised them of.

"The Chairman: We understand that entirely, but this last witness quite obviously was connected with the international Communist movement. I am interested in knowing whether or not your organization has adopted a policy of representing people who are identified with this movement. We are not complaining about your appearance here. What I am interested in knowing is whether or not your organization has adopted a policy of identifying itself with people who have been identified under oath as members of the international conspiracy." (H. 153, p. 1136.)

Washington, D.C., 1966

An attorney was forcibly removed from the hearing room when he attempted to register an objection to a question put by the Committee counsel concerning his client. (H. 171, p. 1027.) When the Committee Chairman requested that the attorney be returned to the hearing room, it was learned that he was already in jail.* (H. 171, pp. 1029-37.) Subsequently, seven attorneys for other subpoenaed witnesses withdrew, and in a prepared statement read by one of them they said (H. 171, p. 1065):

" . . . although we have been able to bail Mr. Kinoy out of jail, and he stood beside me an hour ago, the brutal treatment offered him has all but destroyed any chance we may ever have to represent our clients

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* The attorney's conviction for disorderly conduct was reversed in *Kinoy* v. *District of Columbia* (D.C. Cir. July 29, 1968, Docket No. 21262).

adequately. Attorneys cannot function in an atmosphere of terror and intimidation. The fundamental constitutional right to be represented by counsel means counsel free from brutalization and terrorization."

The National Lawyers Guild

In the Committee Report *Communist Legal Subversion, The Role of the Communist Lawyer* (H. R. Rep. No. 41, 86th Cong. 1st Sess. (1959)) the Committee describes The National Lawyers Guild as "an important focal point in the Communist campaign of legal subversion," operating as a "'legal' bulwark of the Communist Party, intervening in legal proceedings in behalf of Communist defendants and lobbying against executive and legislative programs which would curb the effectiveness of the Communist conspiracy in this country." (p. 16.)

In an earlier report on the Guild, the Committee described the Guild as being "cited as a Communist front" which "is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions," which "since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents." *Report on the National Lawyers Guild,* (H. R. Rep. No. 3123, 81st Cong., 2d Sess., (1950)).

Numerous attorney-witnesses, many of whom had represented other witnesses before the Committee, have been questioned concerning their membership in the Lawyers Guild. For example, see H. 82, p. 5449; H. 100, p. 5074; H. 105, p. 5762; H. 115, p. 1302-3; H. 115. pp. 1339-1341; H. 157, pp. 556-7. See also H. 77, pp. 333-4 ("Citations" on the National Lawyers' Guild read into the record).

EXPOSURE

The Committee engages in exposure for exposure's sake.

During the debate on the resolution first creating and authorizing the Committee's predecessor, the House of Representatives Special Committee on Un-American Activities, Rep. Martin Dies, the Committee's first Chairman, stated (84 Cong. Rec. 7570 (1938)):

> "I am not in a position to say whether we can legislate effectively in reference to this matter [un-American activities], but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession. Always we must keep in mind any legislative attempt to prevent un-American activities, might jeopardize fundamental rights far more important than the objective we seek, but when these activities are exposed, when the light of day is brought to bear upon them, we can trust public sentiment in this country to do the rest."

After the Committee became a standing committee of Congress in 1946, other members, congressional allies, and staff personnel made similar statements. For example:

Rep. Donald Jackson—1951, 1953

> "The Committee on Un-American Activities has a tremendous job to do. It has the job of spotlighting those whose activities are subversive in nature and those whose activities and whose public statements have made them suspect." (97 Cong. Rec. 7180 (1951).)

* * *

> "The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work, to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to

determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation." (99 Cong. Rec. 2019 (1953).)

(See also H. 77, p. 3336.)

Rep. Harold Velde—1952, 1953

"The principle objectives of the committee, during this Congress, have been to expose subversive elements in the motion-picture industry and in essential defense areas in the United States, to expose the complicity of American Communists and their part in the destruction of freedom in the Far East, and to expose the manner in which Communists and espionage agents have gained employment in the Federal Government.

• • •

"I want to assure Members of this body that our committee will exhaust every effort to make a full disclosure not only of the individuals named before the Committee as having engaged in espionage while in Government employment, but to expose those important individuals who made it possible for them to become employed in the Government." (98 Cong. Rec. A4662 (1952).)

• • •

" . . . I say that I feel Communists should and will be ferreted out and reported to the Congress and to the people, wherever they may be found. . . . " (99 Cong. Rec. 2130 (1953).)

Rep. Morgan M. Moulder—1953

"The Committe on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism and we must not permit baseless propaganda to injure the work of the Committee." (99 Cong. Rec. 1985 (1953).)

• • •

" . . . I am sure that all members of this committee are equally anxious to expose communism and com-

munistic activity wherever it may exist . . . ." (H. 77, p. 3316.)

Rep. Kit Clardy—1954

"Unfortunately the University and the other schools do not possess the power of subpoena; they cannot place witnesses under oath and subject them to pains and penalties if they should refuse to answer questions honestly and truthfully. Where the committee comes in is that it is in a position to do that and to lay out before the institutions of learning facts that we develop in these hearings. From there on out it is up to those institutions to do whatever, in their judgment, is wise and proper. We have made no effort to dictate to any of these schools, nor will we, as to what they should do following the hearings that we may hold. In this instance, of course, the committee is intensely gratified to know that the heads of various institutions in this State have been alert to the problems our hearings have developed and have taken swift, prompt, and I think, effective action." (H. 82, p. 5432.)

Rep. Francis E. Walter—1955, 1956, 1961

"Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible the extent of the infiltration of Communism in all phases of our society." (*U.S. News & World Report,* Aug. 26, 1955.)

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". . . I think these hearings have been a great success, because after all, while we have not forced anyone to tell what we hoped some of them would tell, nevertheless, charges that have been made have gone unanswered." (H. 96, p. 3655.)

• • •

"For 30 years congressional committees have been investigating Communist and subversive activities in the United States. For 25 years, the House Un-American Activities Committee has been exposing the Communist conspiracy in our midst without fear or favor. This committee has incurred the bitter hatred of Com-

munists and its fellow travelers because they have been successful in smashing communism wherever it raised its head in America, deporting alien Communists, driving Communists out of the Federal, State and city governments, including our schools, and finally having the party outlawed and its members required to register as agents of a foreign power.

"The Communist campaign against the Un-American Activities Committee is full of sound and fury, and fearing, but it is as futile as New York snowflakes in July and rightly so as the American people overwhelmingly support the watchdog efforts of the House Un-American Activities Committee to expose and combat communism through the Nation." (107 Cong. Rec. 21705 (1961).)

* * *

"It is most important that we remember, however, that most of the extensive information the Federal Bureau of Investigation collects on the operations of the Communist conspiracy in this country, for a number of good reasons, is kept absolutely secret. For the most part, it is never revealed to the public except in the case of a court trial.

"Because the FBI is purely an investigating agency and has neither the legislative nor the informing function of a congressional committee, it, alone, cannot do a thorough job of protecting this country from communism." (107 Cong. Rec. 6207 (1961).)

* * *

"The Chairman: Miss Barkaga, I would like to say to you what I said yesterday to Mr. Miller, what you did is not an easy thing. What we are doing is very distasteful to us.

"As elected representatives of the people, it is nauseating to be compelled to sit here and hear our fellow citizens take refuge behind an amendment of the Constitution which is designed to protect people.

"All of us have a job to do, and we hope that the result of our labors will be an awareness on the part

of all the American people so that they, without government activities, can deal with this problem and will deal with it.

"The only reason why there is any significant group of Communists in the United States is because the people have been unwilling to throw them out of decent organizations.

"I trust that, as a result of the work which you have been doing, the American people will decide that they will do something about this very serious problem." (H. 114, p. 972.)

Rep. Edwin E. Willis—1956, 1967

"Secondly, we have, I believe, brought to the attention of the people of this area the serious nature of this conspiracy, and the hard fact of its present existence in various fabrics of our society. This problem is a problem not only for the Federal agencies of our Government, but it is a rightful concern of all loyal Americans.

"Third, we have, I hope, struck another blow at the conspiracy by bringing a few more Communists to the light of day." (H. 105, p. 5767.)

* * *

"The subversive activities of the Communists should be a primary concern of the American people, and we on the committee consider it our main duty and responsibility to keep the public informed by focusing attention on Communist activities endangering the welfare of our Nation." (113 Cong. Rec. 14633 (1967).)

Rep. Gordon Scherer—1957

In October, 1957, a witness objected to being asked to identify an application for employment because he felt the sole purpose of the question was to lead to an exposure of his beliefs and associations. Representative Scherer responded (H. 117, p. 1683):

"Witness, it will lead to an exposure of you being a colonizer for the Communist Party in this area. It has nothing to do with your beliefs. . . ."

Rep. Bob Casey (non-member)—1961

"The Un-American Activities Committee has effectively unmasked those among us who have succumbed to this ideology, and who are the enemies of our people, our economic system and our Nation." (107 Cong. Rec. 2984 (1961).)

Rep. Thomas J. Lane (non-member)—1961

"The House Committee on Un-American Activities is ever alert to this peril. Through its patient, searching, and well-documented investigations, it has exposed both these organizations in their devious methods. The information gained as a result of these investigations has helped the American people to understand how the Communist conspiracy works.

* * *

". . . We must defend ourselves against the insidious practices and one of the most potent means is to unmask those individual organizations that serve as a front for treason." (107 Cong. Rec. 2984-85 (1961).)

Rep. Thomas Abernethy (non-member)—1961, 1965

"I do not know of any tribunal, court, branch or segment of our Government which has contributed more to ferreting out the anti-Americans than the Committee on Un-American Activities. In instance after instance it has turned the light of day on the un-American activities of many un-American people." (107 Cong. Rec. 2987 (1961).)

* * *

"The prime objective of the Un-American Activities Committee is to expose communism wherever and whenever it can be found in the United States." (111 Cong. Rec. 674 (1965).)

Rep. Harlan Hagen (non-member)—1961

"It has exposed to public knowledge the identity of persons who have been members of subversive apparatus in this country. This exposure cannot be ac-

complished at the national level by any agency outside of the Congress." (107 Cong. Rec. 2988 (1961).)

Rep. James C. Davis (non-member)—1961

"The House Committee on Un-American Activities has devoted its efforts principally to uncovering and exposing Communist activities, infiltration, and subversion." (107 Cong. Rec. 3804 (1961).)

Rep. Clyde Doyle—1964

"I think that the women who are not Communists who are opposed to communism, are entitled to know who in the organization [Women Strike for Peace] is a Communist and whether or not it has been infiltrated by Communists, and, if so, where they are lodged. That is the purpose of some of these questions." (H. 155, p. 2092.)

Rep. Richard Ichord—1964

"It is the committee's hope that the information produced here will have a further use and that it will help to, that is, it will help to keep the American people generally, and the people of this area, alert to the fact that communism is a very real problem and danger, both here at home as well as abroad; that it must be fought here as well as abroad. Here it must be fought fairly, intelligently, and effectively, if our freedoms as Americans are to be preserved. (H. 163, p. 1923.)

Rep. Joe Pool—1968

"The tremendous work the Committee has done in the past few years in exposing militant pro-Peking Chinese Leftist Communists, who are on the campuses of many of our universities here in America."

* * *

"I think that the House Committee on Un-American Activities is actually the 'court of last resort' to the people of America to come and find out what's going on in the way of infiltration by enemies, the Communists and by other groups who would destroy America as we know it." (Manion Forum, Weekly Broadcast No. 718, July 7, 1968.)

The Committee attacks organizations.

The Committee has repeatedly used its powers and influence to attack a variety of organizations through hearings or reports relating directly to them, asking defamatory questions or making defamatory statements regarding them in hearings, and issuing subpoenas to the individual or representative of the target organizations.

Committee targets include at least five categories: (1) those which are (or the Committee sees as) actually engaged in the work of limiting the powers of or abolishing the Committee; (2) those which act to protect individuals against the violation of their rights by, or as a result of, the Committee; (3) those which oppose security legislation and agencies other than the Committee; (4) other political and religious organizations; and (5) labor unions.

Examples follow:

National Association for the Advancement of Colored People

In 1963, information concerning leaders of the NAACP was placed into the Congressional Record by Rep. E. C. Gathings, who stated that he obtained the information from the files of the Committee. (109 Cong. Rec. 13591-13621) (1963).*

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* The Committee Reports repeatedly emphasize the wide use to which Committee files are put by members of Congress and other governmental agencies. See, *e.g.*, Committee on Un-American Activities *Annual Report for the Year 1965*, 89th Cong., 2nd Sess. (Comm. Print 1966) p. 61; *Annual Report for the Year 1966*, H.R. Rep. No. 460, 90th Cong., 1st Sess. (1967) p. 40. See pp. 139-146, *infra*.

American Association of University Professors

The American Association of University Professors has frequently criticized universities and colleges for firing teachers who refuse to testify before the Committee. See pp. 71-73, 75, *supra*. Chairman Walter gave the following response to the AAUP censuring of George Washington University (108 Cong. Rec. 23065 (1962)):

> "In view of the record of the AAUP, I believe that every Member of this House should be pleased that a university in our Capital has won the censure of the organization. Had it won praise from the American Association of University Professors, there would be cause to be concerned about George Washington University. I, for one, wish to take this opportunity to extend my congratulations to the university for the action it took in the case of Professor Reichard and to assure it that its censure by the AAUP will in no way discredit it in the eyes of thinking Americans." (See also H. 148, p. 1827.)

American Civil Liberties Union

The Committee has made a number of derogatory remarks about the American Civil Liberties Union. At least twice the Committee has quizzed attorneys representing witnesses on behalf of the ACLU. (H. 153, p. 1143-44, set forth above at pp. 93-95; H. 174, p. 1330-31.)

Southern Conference for Human Welfare

In 1947 the Committee issued a denunciatory *Report on the Southern Conference for Human Welfare* stating that this civil rights group was being used in "devious ways to further basic Soviet and Communist policy." (H.R. Rep. No. 592, 80th Cong., 1st Sess. (1947).) In a detailed article analyzing the report, Prof. Walter Gelhorn concluded that the report " . . . is a document which dis-

credits its authors rather than the organizations it sought to destroy. . . . From semi-truths the Committee has drawn conclusions that would be strained even if the factual assertions of the report were beyond challenge. The report demonstrates, not that the Southern Conference is a corrupt organization, but that the Committee has been intolerably incompetent or designedly intent upon publicizing misinformation." (Gelhorn, "Report on a Report," 60 Harv. L. Rev. 1193 (1947).)

National Council of Churches

The National Council of Churches was the target of the Committee in a hearing considering the retraction of an Air Reserve Training Manual attacking the Council. In questioning Secretary of the Air Force Sharp, Mr. Arens asked:

> "If the facts had been developed by investigators who had checked the records of the Committee on Un-American Activities and other authoritative sources, and if the facts did reveal that a very substantial number of the leadership of the National Council of the Churches of Christ in the U.S. had Communist-front records and were infiltrating in churches and educational institutions, would you nevertheless have repudiated the statements in the manual?" (H. 135, p. 1299.)

Mr. Arens later stated:

> ". . . the leadership of the National Council of Churches of Christ in the United States of America had hundreds or at least over 100 affiliations with Communist fronts and causes. Since then we have made careful, but yet incomplete checks, and it is a complete understatement. Thus far the leadership of the National Council of Churches of Christ in

> America, we have found over 100 persons in leadership capacity with either Communist-front records or records of service to Communist causes. The aggregate affiliations of the leadership, instead of being in the hundreds as the chairman first indicated, is now, according to our latest count, into the thousands, and we have yet to complete our check, which would certainly suggest, on the basis of the authoritative sources of this committee, that the statement that there is infiltration of fellow-travelers in churches and educational institutions is a complete understatement." (H. 135, p. 1303.)

Mr. Arens went on to state names of persons in some way connected with the Council, listing the number of communist "fronts and causes" with which they were allegedly associated. (H. 135, pp. 1303-04.)

Women Strike for Peace

In 1962 the Committee held hearings investigating Women Strike For Peace, a national women's group concernned with arms control and peace.

In his introductory statement at the hearing, Rep. Doyle stated that "excessive concern with peace serves the Communist cause." (H. 155, p. 2065; quoted in full, *infra*, p. 123.) The Committee charged that a few of the women had been connected with left-wing activities in the 1930's and 1940's. On this basis, Doyle concluded that, "Women Strike For Peace is being infiltrated by Communists very definitely." (H. 155, p. 2167.)

See also Committee for the Protection of the Foreign Born, H. 107, pp. 6380, 6644, 6806 and 6818; Committee to Secure Justice for the Rosenbergs, H. 93, entire hearing, and H. 105, p. 5732-33.

United Electrical, Radio, and Machine Workers of America (UE)

Referring to a local hearing scheduled to commence only four days before an NLRB election at the Magnavox plant in Ft. Wayne, Indiana, Chairman Walter is quoted as saying that he postponed the hearing until four days after the election "only after it was feared that false and malicious charges made against the Committee by the UE might result in this Communist-dominated union continuing as bargaining agent in this vital defense plant." (Ft. Wayne, *News Sentinel*, Feb. 28, 1955, p. 1.) In Richmond, Indiana, a local paper had reported earlier that members of the Committee said they were "out to break" the UE local at Magnavox. ("2-Fisted Attack on Red Unions Under Way," *Paladium-Item*, Feb. 15, 1955, p. 1.)

On June 19, 1951, it was reported in the *Baltimore Sun*, that:

> "It can be stated that the basic aim of the forthcoming [Baltimore Committee] hearings is to bring to light the names of Communists in such a way that the labor unions and management can take action to oust them from defense work."*

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* Similarly Rep. Kit Clardy praised workers in two Flint, Michigan plants who retaliated against two fellow workers who had been hostile witnesses before the Committee. Commenting on the ejection of one worker from the Buick plant and intimidation of another causing him to leave Chevrolet, Clardy said, "This is the best kind of reaction there could have been to our hearing." *Flint Journal*, May 16, 1954.

"Mr. Moulder: And, in further commenting, it is my opinion that organized labor has made every effort and successfully so, to rid itself of Communist influence in this country.

"Mr. Johnson: That is true.

"Mr. Clardy: Yes, they have; in a great many places. Of course, there are still, as we all know, some places where the

It was pointed out that employers and unions were unable to oust alleged Communists for fear of retaliatory libel actions. "Thus the House Committee intends to bring out evidence which will be privileged against libel action on which Baltimoreans themselves can take action." (*Baltimore Sun*, June 19,.1951, p. 1.)

The Committee has repeatedly subpoenaed national and local leaders of UE and scheduled hearings to coincide closely with NLRB elections, negotiations, strikes, or other internal union activities:

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fight is still going on, and it hasn't reached a complete victory for those who do oppose it. . There is no need to go into details, but I am sure you will agree maybe that there are still some sore spots scattered about the Nation in some of the union groups, and we, on this committee are doing our best to try to help those who root them out, as Congressman Scherer suggested to me here." (H. 82, p. 5259.)

* * *

"Mr. Clardy: [I]n these Communist-dominated unions there is a strong feeling of desire on the part of the honest, loyal American workingmen to rid themselves of that subversive influence. At the hearing at Detroit four from another union in the State have approached me and asked me if we couldn't render them help in getting rid of the Communist leadership in another union here in the State, and I have had telephone calls imploring the same thing." (H. 82, p. 5564.)

Name	Place	Event	Source
Michael Berescik	Bridgeport, Conn.	Union convention	**Bridgeport Post** July 25, 1947
Joseph Jullianelle	Pittsburgh, Pa.	Election of delegates to Union convention in Cleveland in Sept. 1949	Ingred Jewell in **Pittsburgh Post Gazette**, Aug. 7, 1949; **Pittsburgh Sun Telegraph**, Aug. 9, 1949; regarding Hearing 30
UE leaders	Emporium, Mine Hall, Warren, Pa., and Cincinnati, Ohio	NLRB election	UE, "Operation Intimidation" (N.Y., Undated), p. 12.
(Committee announced an investigation of UE election petition)	Lynn, Mass.	NLRB election, Aug. 16, 1951	**Ibid.**, p. 18.
UE leader	Schenectady, N.Y.	NLRB election, Sept. 1951	UE, "Attacks on UE," (N.Y. undated) p. 2
Herbert Nichol	Baltimore, Md.	NLRB election, July 1, 1951	H. 47, pp. 866-7
Three UE leaders	Flint, Mich.	Three-month strike	**Flint Journal**, Sept. 8, 1954
Three UE leaders	Ft. Wayne, Ind.	NLRB elections in Ft. Wayne and St. Joseph, Mich.	**Ft. Wayne News Sentinel**, Feb. 28, 1955

Commenting on action of subpoenaed local UE leaders in ousting 26 alleged Communists from the local, Committee Counsel Tavenner praised the men for their action saying, "You fellows did a good job," and added that if all other local unions acted similarly "We wouldn't have to pass some of the labor laws we are passing today." (*Bridgeport Post*, July 25, 1947, p. 1.)

During hearings in Pittsburgh, Pennsylvania in 1949* acting chairman Willis inserted into the record and re-

* Rev. Charles Owen Rice, a leader of the Association of Catholic Trade Unions, sought the 1949 hearings investigating the UE in Pittsburgh. ("Probe Tied to UE Election," *Pittsburgh Post Gazette*, Aug. 7, 1949, Sec. 2, p. 1).

ferred to dossiers of 41 individuals in some way connected with UE, nearly all of whom had no relation to Pittsburgh or problems of security there, the alleged subject of the hearing. (H. 125, pp. 425-435, see also p. 405.)

In other instances while questioning witnesses, the committee has referred to UE as "communist dominated and controlled" (H. 125, p. 401), or has asked a witness "why is it that the Communist Party . . . has been so determined to take over or at least endeavor to control the UE?" (H. 61, p. 4323.)

United Packinghouse Workers of America

In Chicago, Illinois, the Committee subpoenaed members of the United Packinghouse Workers of America when they were about to enter negotiations with major packing companies concerning renewal of a three-year contract. (H. 128, p. 516-8.)

International Association of Machinists

At that same hearing Albert P. Dency, chairman of a committee to lift the suspension of a union local, was subpoenaed while the committee was considering the suspension. (H. 128, p. 599-601.)

United Automobile Workers

In Detroit, Michigan, the shop steward of Local 3, UAW, was subpoenaed to testify the day he was running for reelection as steward. (H. 55, p. 2863.)

International Woodworkers of America

In Seattle, Washington, the Committee held a hearing on June 14-19, 1954, during major negotiations throughout

the lumber industry in the area. Strike votes were taking place throughout the week with a general strike scheduled for June 21, 1954. Among those subpoenaed were members of local unions of the International Woodworkers of America, CIO. (*Frontier*, August, 1954, p. 2.) (H. 59, p. 6365-70, 6533-36, 6578-91, 6595-600.)

American Communications Association

During the Pittsburgh hearing mentioned above prior testimony totally unrelated to the Pittsburgh situation was read into the record identifying the ACA as a "communist controlled organization." (H. 125, pp. 392-93, 406-07). In another hearing, in the midst of questioning a physicist who had worked at Minneapolis-Honeywell Plant concerning his knowledge of Communists there, Committee Staff Director Arens made the following gratuitous statement:

> "You might be interested to know, sir, that that organization, the American Communications Association, is now certified as a bargaining agent by the National Labor Relations Board. And if the employers do not bargain with that Communist-controlled organization, they are guilty of an unfair labor practice." (H. 121, p. 2348.)

International Union of Mine, Mill and Smelter Workers

Continuing in the same hearing, Mr. Arens said:

> "You might be interested to know, sir, at the present time while I am talking to you, vital mines of this Nation in the West are serviced by some 80,000 people in the International Mine, Mill and Smelter's Union, which is controlled lock, stock, and barrel by the Communist conspiracy, and if the owners of those mines do not bargain with the conspiracy, they under the present law are guilty of an unfair labor practice." (H. 121, p. 2348.)

International Longshoremen's and Warehousemen's Union

Harry Bridges, President of the International Longshoremen's and Warehousemen's Union, was questioned at great length in a Committee investigation of passports. (H. 127, pp. 666-739.) At the conclusion of the hearing, Rep. Scherer referred to Mr. Bridges as the "head of the communist-dominated Longshoremen's Union." (H. 127, p. 736.) Rep. Scherer inserted into the record a newspaper column entitled "Why Did Bridges Get Red Carpet?" and commencing as follows:

> "During Harry Bridges' recent visit to Rome, the U.S. Embassy there rolled out a carpet for him as red as the politics and philosophies of the Soviet lands he loves so much." (H. 127, p. 738.)

In a subsequent hearing the Committee described Bridges as a "communist agent . . . who, together with other Communists, controls the International Longshoremen's and Warehousemen's Union." (H. 139, p. 1756.)

The Committee attacks those who oppose it or security agencies.

Emergency Civil Liberties Committee

The Committee has devoted an unusually large share of attention to the Emergency Civil Liberties Committee (ECLC), which has as its goals, according to the Committee:

"1. Destruction of the [Committee];

"2. Extinction of the investigative powers of the Congress in the field of subversive activities;

"3. Restriction of important [unspecified] functions of the [FBI] in the investigation of subversive activities; and

"4. Creation of a general climate of opinion against the exposure and punishment of subversion." (*Operation Abolition,* 85th Cong., 1st Sess. (1957); p. 2.)

The Committee devoted an entire report to ECLC. *Operation Abolition,* 85th Cong., 1st Sess. (1957). It referred to it in its *Guide to Subversive Organizations and Publications,* 85th Cong., 1st Sess. (1957) (p. 35), in a superseding "guide" published in 1961, *Guide To Subversive Organizations and Publications,* H.R. Doc. 398, 87th Cong., 2d Sess. (1961) (pp. 69-70), and in the *Annual Report for 1958,* H.R. Rep. No. 187, 86th Cong., 1st Sess. (pp. 34-5). Employing extensive imputation of guilt by association the Committee calls this opponent of its existence a Communist outfit, created by the "Communist conspiracy," a Communist front, and the like.

San Juan, 1959

"Mr. Scherer: . . . [T]here is an organization on the mainland called the Emergency Civil Liberties Committee. That committee is Communist dominated, Communist controlled. Its president is Harvey O'Connor, a dedicated, hard-core, identified Communist. He is now under indictment.

"The Emergency Civil Liberties Committee has followed the Un-American Activities Committee into almost every city in which it has had hearings in the continental United States. In fact, it has come there in advance. Its agent came into Puerto Rico and he is here today. He has been here. He is Clark Foreman.

"His purpose is to come into this community, as he has into almost every community in which this committee has had hearings, and misrepresent the pur-

poses of this committee, to stir up hatred and ill will against the Congress of the United States.

"I consider that man more dangerous and disloyal to the United States than any witness we might question here, and he is not a Puerto Rican.

"I just wanted to make it clear, the purpose of this investigation.

"Mr. Clark Foreman: May I object to this defamation without —

"Mr. Tuck: The gentleman is out of order. If you care to testify, you will probably be summoned.

"Mr. Scherer: I would like, in view of what I have said, to ask our counsel, Mr. Arens, to just tell briefly what this Emergency Civil Liberties Committee is, its history, and what we know about it—this committee which has its representative here and who just violated the rules of this committee by making the outburst in the committee room." (H. 134, pp. 1616-7.) (See also H. 117, p. 1649; H. 121, pp. 2203, 2219.)*

National Committee to Abolish the House Un-American Activities Committee

Likewise, another organization aiming to abolish the Committee has received unusual attention at the hands of the Committee. In the Committee's report, *The Communist Party's Cold War Against Congressional Investigation of Subversion*, 87th Cong., 2d Sess. (1962), a whole section is devoted to NCAHUAC Executive Secretary Frank Wilkinson under the title of "Mr. Abolition." (pp. 1484-94.) Wilkinson is referred to as the "field representative (chief agitator) of The National Committee to Abolish

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* On one occasion the Committee interrupted hearings to read a release by ECLC attacking the Committee, following it with a portion of a broadcast by Fulton Lewis, Jr. attacking ECLC for attacking the Committee. (H. 117, pp. 1622-3.)

For references to officers of ECLC as having been identified as Communists, see H. 123, p. 2804; H. 125, p. 334; and H. 157, p. 751.

the Un-American Activities Committee" (p. 1484), and as "professional agitator Frank Wilkinson." (p. 1488.) The Committee has referred to him as "the notorious Frank Wilkinson". (H. 137, p. 2170.) In one hearing Rep. Scherer stated for the record that "[Wilkinson] is an identified communist," and was "one of the leaders participating in the San Francisco riots." (H. 139, p. 1785.) Wilkinson was subpoenaed twice by the Committee, once in Los Angeles in December, 1956, (H. 107) and again in Atlanta, Georgia, in July, 1958, where he was engaged in work opposing the Committee (H. 122).

Four members of the Supreme Court of the United States concluded that the Committee's purposes in subpoenaing him in Atlanta were improper. (*Wilkinson* v. *United States,* 365 U.S. 399, 429 (1961) (dissenting opinions).) The other justices did not consider the question.

Committee Attacks on Individual Opponents

Detroit, 1954

Rev. Charles A. Hill was questioned as follows:

> "On February 8, 1943, according to the information which the committee has, you signed a petition to Congress to abolish the Dies committee. I raise no question in the world about your right or anyone else's right to express an opinion regarding a predecessor of this committee, or any committee.
>
> "The point I am interested in is, who was it and under what circumstances was the use of your name obtained in that matter, if it was so obtained?" (H. 55, p. 2827.)

Seattle, 1954

In hearings in Seattle, Washington, the Committee interrupted its questioning of a friendly witness to ask her to comment on a leaflet attacking the Committee which was being distributed by subpoenaed witnesses. Mr. Jackson, describing the leaflet as a "highly illiterate document", went on to state:

"I see no reason why his [the author's] name should not be made known, not only to the members of his own union, but to everyone who may be within sound of the activities of this committee today. And so there is no mistake about it—the name is Mel Kirkwood, M-e-l K-i-r-k-w-o-o-d, and his illiterate diatribe sounds like an editorial from the Communist Daily Worker." (H. 59, pp. 6082-3.)

Kirkwood was later called and questioned concerning the leaflet, including how many copies had been typed, amongst whom they were circulated, etc. (H. 59, p. 6289.)

Washington, D.C., 1956

"Mr. Arens: Did you hire Dr. Marie Jahoda as one of your associates and assistants?

* * *

"Mr. Arens: Did you know that she was admitted into the United States only in 1945?

"Mr. Cogley: She has a pronounced accent. I presumed it was not too long ago.

"Mr. Arens: Did you know that prior to her association with the study of which you were director that she had issued reports or studies herself critical of the loyalty programs of this Government, published reports?" (H. 103, p. 5180.)

Los Angeles, 1956

The Committee interrupted the line of interrogation of a witness and asked him about a button he was wearing which opposed the Walter-McCarran Act. He was asked what organization he got it from, whether he had to pay for it, and finally, "What else . . . [he had] done besides displaying that button to try to cause the repeal of the Walter-McCarran Immigration and Nationality Act?" (H. 107, pp. 6743-4.) (See also H. 61, p. 4350; H. 128, p. 558.)

Washington, D.C., 1958

The Committee issued a subpoena to Cyrus Eaton after he had verbally attacked J. Edgar Hoover and the FBI.

The Committee stated publicly that it intended to question Eaton about his statements. ("House Committee Subpoenas Eaton, Un-American Activities Unit to Question Industrialist on Attacks on F. B. I.," New York Times, May 20, 1958.)

Atlanta, 1958

A witness in Atlanta was questioned about his activities in opposition to the Committee as follows:

> Mr. Arens: "While you were one of these organizers did you lend your name, your prestige, and your status in the labor organization in attacks against the House Committee on Un-American Activities?
>
> * * *
>
> "I have in my hand a thermofax reproduction of the Communist Daily Worker of Sunday, May 25, 1947, listing names of a number of people who are alleging witch hunts, fascism, Red baiting and the like of this committee as alleged by the conspiracy, all endorsing this warning against this committee, including one Karl Korstad of the Food and Tobacco Workers Union in Memphis. Does that refresh your recollection?
>
> "Mr. Korstad: Personally, I don't remember, I could have." (H. 122, p. 2706.)

Pittsburgh, 1959

The Committee questioned a witness about an ad placed in a local paper opposing scheduled hearings. Mr. Arens wanted to know, "Who gave you the information contained in the ad about the voting records of the members of this committee? Who gave you that information?" (H. 125, p. 350.)

Chicago, 1959

Both Richard Criley and Leon Katzen stated that they were subpoenaed for the 1959 Chicago, Illinois hearings

four weeks after all the other subpoenas had been served and only after they had mailed out 8000 copies of a leaflet over their signatures opposing the hearing. (H. 128, pp. 539, 542, 550-52.)

Washington, D.C., 1962

Rep. Scherer stated, "this letter [of Rev. Dr. Willis E. Elliott, Secretary, Department of Evangelism, Board of Homeland Ministries, United Church of Christ] has been given wide circulation. It is a scurrilous attack on the [Committee]. . . . One does not expect this kind of a letter from one of the lowest persons in our society, much less a minister of the Gospel. It rather nauseates and disgusts me that some member of the clergy and some others like him in the Cleveland area use their clerical robes to give weight to their unfair and false charges." (H. 153, p. 1052.)

The letter is then quoted as referring to:

> "Violation of your own rule that the names not be made public prior to the hearing date, the identity of the subpoena-recipient has been given most excellent publicity (by your design or by the irresponsible management of your staff)." (H. 153, p. 1052.)

Washington, D.C., 1963

"Mr. Nittle: Did you issue or cause to be issued a public statement, which you intended to be published in the press, relating to your opposition to the loyalty oath?

"Mrs. Johnson: I decline to answer that question on the grounds which I have previously stated.

"Mr. Nittle: Did you test the loyalty-oath law in the courts?

Mrs. Johnson: I decline to answer that question as previously stated.

"Mr. Nittle: Were you instructed by any Communist Party functionary to do just that?" (H. 157, p. 535.)

The Committee inquires about legitimate political activity.

A common theme of the Committee is that it is the patriotic duty of Americans to avoid political activities which might bring them into association with members of the Communist Party. A cloak of suspicion and disloyalty is thereby cast upon activities and beliefs over a wide range, including peace, civil rights, immigrant welfare, and civil liberties. The Committee frequently states or implies that Americans should avoid certain groups and ideas, even though they may have inherent worth, because it is possible that the organizations are serving purposes of the Communist Party. For example:

Newark, 1958

"Mr. Willis: Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States today consists of underground behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism." (H. 123, p. 2761.)

New Haven, 1956

"Mr. Arens: Did the hard-core Communists themselves, the actual, what we call, technical members of the conspiracy, have under their discipline other people?

"Mr. Mosher: Yes; they did.

"Mr. Arens: What would be a fair proportion, Mr. Mosher, of the people who are under Communist Party discipline as distinct from the actual 23,000 hard-core members of the conspiracy on American soil?

"Mr. Mosher: I would feel that the fellow travelers or people who are sympathizers would be probably 10 to 1 at least.

"Mr. Arens: Ten to one of the hard-core?

"Mr. Mosher: Well, of the membership.

"Mr. Arens: What is your estimate now of the basis of the conspiracy in Connecticut, as to the total membership in the conspiracy itself within this State?

"Mr. Mosher: Well, the total membership of the Communist Party members within the State at the time that I had knowledge was somewhere in the vicinity of eight to nine hundred people.

"Mr. Willis: How many?

"Mr. Mosher: Eight to nine hundred.

Mr. Arens: These eight to nine hundred were just not namby-pamby intellectual jackasses; they were members of the conspiracy, were they not?

"Mr. Mosher: Members of the Communist Party. (H. 105, p. 5657.)

Boston, 1958

"Mr. Arens: Can you tell us the ratio, on the basis of your background and experience, of hard-core Communists to those who are under Communist discipline or who contribute to the work of the apparatus?

"Mr. Penha: Sir, that is a question well put. I think it is a very pertinent one. You will find that approximately 40 to 60 percent of its membership are secret members, hard-core members, that are infiltrated in various organizations, industry, fraternal organizations, and the like. This, of course, does not mean that this remaining portion are not hard core, but they are in other levels.

"Mr. Arens: Is there any way you could appraise for us, based upon your experience in the Communist Party, the numbers who are not actually within the apparatus consciously but who serve the work, purpose, and objective of the apparatus under the stimulus of the apparatus?" (H. 121, p. 2098.)

The Committee raises suspicion about the entire peace and disarmament movement:

Washington, D.C., 1963

"Mr. Doyle: Why then, do they talk of peace?

"Because it serves Communist interest in two ways:

"1. The initiated Communist, understanding his Marxist-Leninist doctrine, knows that a Moscow call to intensify the 'fight for peace' means that he should intensify his fight to destroy capitalism and its major bastion, the United States of America. This is the way to peace—according to his Communist doctrine. Thus, Communist peace propaganda is a call to action for all Communists, spurring them to increased activity and effort aimed at achieving the Communist goal of world conquest—by war or any other means.

"2. As events have proved, peace propaganda and agitation have a disarming, mollifying, confusing and weakening effect on those nations which are intended victims of communism. Moreover, throughout history, aggressors, dictators, and governments bent on conquering others, or the whole world, have known that pacifism or an unrealistic and exaggerated desire for peace on the part of their intended victims is a tremendous asset to ultimate victory for the aggressor. Excessive concern with peace on the part of any nation impedes or prevents adequate defense preparation, hinders effective diplomacy in the national interest, undermines the will to resist and saps national strength. For this reason, in today's world, intense peace propaganda and agitation in non-Communist nations obviously serve the aggressive plans of world communism." (H. 155, p. 2065.)

The Committee raises suspicion about those committed to racial progress.

1947

"The Southern Conference for Human Welfare is an organization which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South. In the early history of the organization, some well-intentioned persons were misled into joining. Many of them have since severed their connections on learning its true character.

"Careful examination of its official publication and its activities will disclose that the conference actually is being used in devious ways to further basic Soviet and Communist policy. Decisive and key posts are in most instances controlled by persons whose record is faithful to the line of the Communist Party and the Soviet Union." (Report on Southern Conference for Human Welfare, H.R. Rep. No. 592, 80th Cong., 1st Sess. 2 (1947).)

Atlanta, 1958

"Mr. Arens: Do you honestly feel, and are you trying to make this committee and the people of this country believe, that you, a member of the Communist conspiracy, responsive to the will of the Kremlin, are in truth and in fact, concerned about the welfare of the Negro people of this country?

"Mr. O'Dell: I wouldn't try to make you believe anything.

"Mr. Arens: Then stand up and tell this committee while you are under oath whether or not your activities and this facade that you are throwing around yourself in this aura of so-called respectability are not a front for the conspiratorial activities of yourself as a member of the Communist Party." (H. 122, p. 2716.)

The Committee congratulates those who refuse to allow alleged Communists a forum, raising the implication that those who do allow them a forum are disloyal.

Washington, D.C., 1960

"Mr. Jackson: One Baptist church in the District—and I hope Heaven will look kindly on the minister of that church—refused to let the group use his church for that purpose when the nature of the meeting became apparent and when it was made known that an identified, convicted Communist was going to be on the platform with high church officials." (H. 135, p. 1313.)

On occasion, the Committee makes quite explicit its view that citizens should not associate themselves with causes or organizations that have any Communist participation on pain of being charged with Communist membership or sympathy.

Los Angeles, 1956

"Mr. Doyle: May I suggest that it would seem to me that if I were a sponsor of the Los Angeles Committee for Protection of Foreign Born, now that this record is revealed showing the bank account in control of convicted or proven Communists, I would get off the sponsorship.

"Mr. Scherer: Unless you were a Communist.

"Mr. Doyle: Well, unless I wanted to help the Communist cause against the internal security of my country.

"And I think now, in view of this public record which can't be controverted—here it is,—that if I were a member of the Los Angeles Committee for Protection of Foreign Born, I think I would get off. I am dead sure I would get out of that committee.

"Mr. Scherer: Unless you were a Communist.

"Mr. Doyle: Yes, or wanted to help their cause." (H. 107, p. 6836.)

1967

"The success of the Communist united front strategy, which is so evident in the Vietnam Week program, indicates that much needs to be done, particularly on the college level, to inform the youth of America about both the principles on which the Government of this country is based and the nature, record, strategy, and tactics of communism. No person who is truly dedicated to freedom, liberty, and the concept of democratic government, who opposes tyranny and totalitarianism—and, at the same time, is truly informed about the nature and record of communism—joins in any united front operation with Communists." (*Communist Origin and Manipulation of Vietnam Week*, 90th Cong., 1st Sess. (Comm. Print 1967) p. 54.)

The Committee repeatedly inquires into legitimate political activities not involving illegal action and about

which Congress could not constitutionally legislate. The Zeisel study reveals that of all questions asked by the Committee to unfriendly witnesses involving Communist or other allegedly subversive activities, only 6 per cent dealt with illegal and proscribable activities such as espionage, sabotage, etc. Many of the activities were matters of public record and putting such questions could only serve to expose the witness to public displeasure. For example:

Candidacy for political office

"Mr. Arens: I lay before you now a photostatic copy of lists of the Communist candidates for November elections of 1930, 1932, 1934, 1936 and 1938, including a list of the presidential electors for 1932, and 1936, and ask you to look at that document and tell us whether or not you are the Sam Davis alluded to as one of the presidential electors of the Communist Party?" (H. 105, p. 5745.) (See also H. 61, p. 4355; H. 105, pp. 5619, 5719, 5747; H. 128, p. 566; H. 123, p. 2859.)

Nominating Petitions

"Mr. Nittle: Mrs. Chesman, the official record indicates that a Miriam Chesman in 1946, a resident at 117 White Plains Road, Bronx, N.Y. was a signer of a Communist Party nominating petition for several persons, including Robert Thompson who is listed as a candidate for the office of governor of New York upon a Communist Party ticket.

"I hand you a photostatic copy of that petition marked for identification as Chesman Exhibit No. 2. Are you the Miriam Chesman whose signature is upon that nominating petition? . . . ."

"Mr. Nittle: You will note that the petition is entitled 'Communist Party Independent Nominating Petition.' It is directed to the Secretary of State of New

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* Appendix 5, Table 5, p. 77.

York and states that the signers of that petition declare their support of the candidates nominated, and select the name 'Communist Party' as the name of the independent body making the nomination.

"Were you a member of the Communist Party on the date of the execution of that petition." (H. 155, p. 2170.) (See also H. 105, pp. 5750, 5672, 5753; H. 155, p. 2101; H. 123, pp. 2769-70, 2809, 2850; H. 82, p. 5417; H. 111, p. 818.)

Communications with Elected Officials

"Mr. Nittle: In the course of your candidacy, were you contacted by pressure groups or representatives of pressure groups?

"Mr. Flink: Yes, I was, sir.

"Mr. Nittle: Were you contacted by any representatives of the peace movement?

"Mr. Flink: I was. I was contacted by the Committee for a Sane Nuclear Policy and by the Women Strike for Peace.

"Mr. Nittle: Would you describe the circumstances under which you met with a representative or representatives of Women Strike for Peace?

"Mr. Flink: During the month of October, the candidate who was running for the State senate on the same ticket I was and I, both received an invitation to be interviewed by the local representatives of the Women Strike for Peace.

"We arranged an appointment at my running mate's house, which was held during one evening. I don't recall the date at this point, but at that time, the representative of Women Strike for Peace and two other women came to my running mate's house, and we then proceeded to be interviewed.

"Mr. Nittle: Would you tell us what was said during the course of that interview?

"Mr. Flink: The women asked us whether or not we were familiar with the Women Strike for Peace, and we told them we had heard the name, had seen some of their literature.

"They then proceeded to show us other literature and ask us questions which primarily dealt with the subjects of disarmament, the conversion of presently operated military plants to peacetime use, the proposal for the introduction of legislation to set up an economic committee within the State to study the problems associated with disarmament—unemployment, for instance, retooling—so that in the event disarmament was achieved we would then be able to disarm or change over our economy with a minimum of confusion and unemployment." (H. 155, p. 2072.)

"Mr. Arens: Have you in the course of the last several years gone to see the Governor of this State, or the then Governor of this State, on behalf of certain causes in which you were active?" (H. 125, p. 378.) (See also, H. 105, pp. 5763, 5650; H. 61, pp. 4361-62; H. 100, p. 5061; H. 82, p. 5225.)

"Mr. Scherer: Would you mind telling us what your conversation was with Congressman Zablocki?

"Mr. Giacomo: I told him I was subpenaed to come before this committee.

"Mr. Scherer: What did Zablocki say?

"Mr. Giacomo: He did not seem surprised or did not seem excited about it.

* * *

"Mr. Scherer: When Congressman Zablocki arrived at your home, tell us just in substance what you said to him.

"Mr. Giacomo: I said, 'Congressman, I want you to know, and I think you ought to know, that I have been subpenaed by the House Committee on Un-American Activities.' I thought he would find out sooner or later that I had been subpenaed and appeared before this committee and, being my Congressman, I thought he should know about it from me rather than anyone else.

* * *

"Mr. Doyle: Off the record.

(A short discussion was held off the record.)

"Mr. Doyle: I recessed the committee for a moment to have an informal discussion with reference to this question. I would like to have the record show what Mr. Tavenner feels, as long as we have gone as far as we have on the record, that the question ought to be answered, which Mr. Scherer asked about the conversation between the witness and Congressman Zablocki.

"I just informed Congressman Scherer that I felt that that question was not germane or pertinent and not a proper question.

"Mr. Tavenner: It was my suggestion to the chairman that, inasmuch as the record shows what it does, it ought to be clarified by a complete and full answer to the question and such further questions as Mr. Scherer desires to ask him regarding Mr. Zablocki. Then, if there is any need, Mr. Zablocki can be called for any explanation that he desires to make.

"Mr. Doyle: I might further state that it has been my impression or feeling, as a member of the committee, that conversations in which a Congressman is referred to—that confidential conversations between a constituent and a Congressman are, more or less, in the category of a confidential communication. On that basis, partially, I felt that it was an improper question, but let's proceed." (H. 174, pp. 1248-50.)

Newspaper Advertisements and Letters

"Mr. Bruce: Are you a signer of an ad that appeared in the *National Guardian* on July 16, 1962, entitled "THE RIGHT TO SANCTUARY," dealing with Robert H. Soblen and appealing to England and appealing to the public to demand that England grant sanctuary to Dr. Soblen." (H. 157, p. 301.) (See also H. 157, pp. 2098, 2100, 2148; H. 163, p. 1915; H. 55, p. 2898.)

Public Meetings and Speeches

"Mr. Nittle: The Committee has information that at the west side committee for friendly relations with Cuba meeting, which was held on September 28, 1961,

at the Carlton Terrace, and to which I referred in Exhibit No. 2, there were approximately 500 people in attendance at that meeting. Is that your memory?

• • •

"Mr. Nittle: Was not the chairman of this meeting Jessie Gordon, who is the public relations and editorial consultant of a magazine called *The Nation*?

• • •

"Mr. Nittle: As a matter of fact, he gave you a rather long introduction as the first speaker. Did he not introduce you as a lawyer and fighter for civil liberties?

• • •

"Mr. Nittle: The report of your address at that meeting seems to indicate that your subject was solely Cuba. Do you recollect saying this, or words to this effect? 'The Cubans are working out a new way of life . . .'?

"Mr. Lynn: That may very well be completely accurate." (H. 157, p. 311.)

Peaceful Demonstrations

"Mr. Nittle: I hand you a photograph which is marked for identification as Posner Exhibit No. 4.

"This is a photograph of the picket line established at the White House in Washington on April 28, 1962, by Women Strike for Peace.

"Do you not appear in that photograph as the second person in line from the right carrying a sign, 'WE HAVE NO RIGHT TO TEST'?

"Mrs. Posner: The fifth." (H. 155, p. 2086.) (See also H. 153, pp. 1142-43; H. 155, pp. 2193, 2196; H. 157, p. 2141; H. 82, p. 5284.)

Articles

"Mr. Nittle: Have you written articles for the *National Guardian* at any time?" (H. 157, p. 262.)

Student Organizations

The Committee subpoenaed membership lists of six campus organizations at the University of Michigan and University of California and denied a motion to suppress the lists. (H. 170, p. 923).

Sales of Books and Periodicals

"Mr. Colton: Sir, I refuse to answer the question on the following grounds: In view of Congressman Walter's statement that it is for the purpose of effecting legislation concerning the sale of books or magazines, I feel that such sale—

"The Chairman: May I interrupt at that point?

"We are not concerned with the sale of books or magazines. We are concerned with the distribution of Communist propaganda and nothing else. I hope you have not misunderstood me." (H. 115, p. 1222.)

The *San Francisco Chronicle* reported the interchange as follows:

"Colton began to object on grounds the constitution forbids legislation banning the sale of books.

"Chairman Walter said, 'These are not books, this is Communist propaganda.'

"'A books is a book, whether it's Communist or not,' Colton said defiantly." (*San Francisco Chronicle,* Friday, June 21, 1957.)

The Committee's publications and files.

The materials published by the Committee can be divided into three principal categories:

(1) The largest category consists of the hearings and reports dealing with allegedly subversive activities within the United States.

(2) The second largest group of publications are monographs, anthologies and a few "consultations" all re-

lating to various aspects of the Communist movement throughout the world.

(3) The third group consists of publications explaining and defending the Committee's own existence.

(There are also a relatively limited number of reports with respect to bills which have been referred to it and with respect to proceedings for contempt of Congress.)

(1)

The format of each of the published hearings is basically the same. The Committee first sets out the mandate of the Committee, Public Law 601, embodying Rule XI. Then follows a synopsis of the hearing, a short, unanalytical statement of what happened at the hearing. With respect to the unfriendly witnesses, the Committee summarizes the answers which the witnesses gave, and also sets out many questions which they refused to answer on grounds of self-incrimination or for other reasons. Thus the synopsis contains a summary of many of the statements which were made about the witness during the hearing.

Following the synopsis is a transcript of the hearing with copies of some of the exhibits which the Committee made use of during the hearing. Frequently the transcript contains footnotes referring to matters outside the record of the hearing (*e.g.*, H. 174, p. 1258). The transcripts are frequently edited either as shown by asterisks or otherwise. Following the transcript is an index listing all the individuals, organizations and publications which have been referred to in the hearings, including persons whose names may not have been mentioned but are included in exhibits (See, *e.g.*, Ex. 50, pp. 40, index xv).

The reports of hearings have been given wide circulation by the Committee. For example, the Committee arranged for the printing of five times the normal run on Congressional documents for its hearings entitled *Violations of State Department Regulations and Pro-Castro Propaganda Activities in the United States* (H. 157). (See H. Con. Res. 413, 89th Cong., 1st Sess., 79 Stat. 1431.)

Each year the Committee's annual report reiterates the substance of the hearing synopses from that year including references to questions which the witnesses refused to answer. These materials also receive broader circulation than the normal Congressional document. (See, *e.g.*, H. Con. Res. 412, 89th Cong., 1st Sess., 79 Stat. 1431.)

Closely associated with the hearings are the Committee's reports about Communist or other "subversive" activities based upon its hearings and investigations. More or less typical examples of these reports are *Report on the Southern Conference for Human Welfare,* H. R. Rep. No. 512, 80th Cong., 1st Sess. (1947), *Communist Legal Subversion: The Role of the Communist Lawyer,* H.R. Rep. No. 41, 86th Cong., 1st Sess. (1959), and *Communist Origin and Manipulation of Viet Nam Week (April 8-15, 1967),* 90th Cong., 1st Sess. (Comm. Print, 1967). The main thrust of these Committee reports is that Communists are involved in activities outside of the Communist Party by which they intend to achieve the ends of the Communist Party.

While each of these reports contains the results of investigations, there is no suggestion that it is necessary or advisable that Congress take any action. For the most part the reports indicate that alleged Communists are joining organizations and protesting government action which they oppose. None of these reports indicate that these persons were engaged in activities which Congress

might proscribe. The major function which these reports seem to serve is to spotlight the activities of certain individuals and organizations which the Committee deems subversive. The Committee achieves wide circulation for these reports. For example, 11,500 additional copies of the report on *Communist Legal Subversion* were printed. (H. Res. 187, 86th Cong., 1st Sess., 105 Cong. Rec. 4097 (1959).)

The summary product of all the Committee's reports and hearings is its *Guide To Subversive Organizations and Publications* (H.R. Doc. No. 398, 87th Cong., 2d Sess. (1961)), which according to its introduction "lists a total of 663 organizations or projects and 122 publications cited as Communists or Communist front by Federal Agencies; and 155 organizations and 25 publications cited as Communist or Communist front by State or Territorial investigating committees." (p. 10.) This widely circulated document (100,000 copies, H. Con. Res. 416, 87th Cong., 2d Sess., 76 Stat. 1417) contains no information not otherwise publicly available. For the most part it is quotations from other congressional documents. A typical entry is:

> "Modern Book Store (Chicago, Ill.)
>
> "1. 'The evidence in the record of the Committee hearings is clear, and *the committee so finds,* * * * that the Modern Book Store, Chicago, is the [Communist] party outlet for Communist Party propaganda and literature in that area.' *(Committee on Un-American Activities, Annual Report for 1957, H.R. Rep. 1360, February 19, 1958, p. 37.)*" (Emphasis added.)

(2)

The second major area of the Committee's publications are those which attempt to characterize the international Communist movement as a monolithic effort to destroy democratic government by any means including force and violence. These publications serve as continual re-

inforcement of the Committee's view of Communism. The most recent document in this series is typical. The Committee's report, *Communist Commitment To Force And Violence,* 90th Cong., 2d Sess. (Comm. Print 1968), gives the philosophical background of the supposed commitment to force and violence and tries to show how these means are advocated and applied by Communist movements throughout the world. The report discusses Communism in Russia, China, Czechoslovakia, Italy, Cuba and parts of South America, but does not relate the discussion to events in the United States. While this most recent publication is a relatively short document of only forty pages, some of the Committee's reports on international Communism are much larger. Part I of *The Communist Conspiracy* (H.R. Rep. No. 2240-44, 84th Cong., 2d Sess., 1956) is approximately three inches thick. The Committee's *Soviet Total War: 'Historic Mission' of Violence and Deceit* (1956) is a 1200 page anthology of short articles many of which were previously published elsewhere. (7,000 additional copies of this two-volume set were printed, H. Con. Res. 307, 87th Cong., 1st Sess., 75 Stat. 964.) Following are the titles of several other like publications of the Committee:

The New Role of National Legislative Bodies in the Communist Conspiracy, 87th Cong. 1st Sess. (1961).

Lest We Forget! A Pictorial Summary of Communism in Action (Dr. Klaus Samuli Gunnar Romppanem), 86th Cong., 2d Sess. (1960).

Crimes of Khrushchev, Parts I-VII, 86th Cong., 1st-2d Sess. (1959-1960).

Communist Persecution of Churches in Red China and Northern Korea, 86th Cong., 1st Sess. (1959).

Who Are They? (Part IX — Hoxha and Gheorghiu-Dej), 85th Cong., 2d Sess. (1958).

(3)

The last category of documents is that in which the Committee seeks to defend its own efforts. It consists of publications explaining what the Committee does, attacking persons who oppose the Committee, and defending the Committee's actions.

Typical titles are "House Committee on Un-American Activities, What It Is, What It Does" (July, 1958); "The Communist Party's Cold War Against the Congressional Investigation of Subversion" (1962); "The Truth About the Film 'Operation Abolition'" (1961).

These documents are well circulated. The Annual Report for 1966 states (H.R. Rep. 460, 89th Cong., 2d Sess. (1967), p. 41):

> "During the year 1966, the Committee distributed 101,394 copies of its publications to Members of Congress, Government agencies, and private individuals and organizations.
>
> "The Committee had a total of 129,596 copies of its publications available for distribution during 1966. This total included 75,075 documents printed and received prior to 1966, 10,284 copies of hearings and reports dated 1965 but received from the Government Printing Office in 1966, and 44,210 copies of hearings and reports dated 1966."

In 1962 the Committee distributed 456.410 copies of its publications. (Committee on Un-American Activities, *Annual Report for the Year 1962* (Comm. Print 1963), p. 87.)

"Operation Abolition"

After the San Francisco hearings of May, 1960, a film, "Operation Abolition," was commissioned by the Committee to be made from subpoenaed news films of disturbances surrounding the 1960 San Francisco hearings.

on its completion the film was incorporated in a report
he House relating to the hearing disturbances.

ritics of this film claimed that facts were misstated,
scenes were shown out of sequence and that the film
ored matters necessary to give a full picture of what
pened at the hearings. (See *Wilkinson* v. *United States*,
U.S. 399, 426-27 (1961) (Douglas, J. dissenting).)

he Committee issued several publications about "Op-
ion Abolition" and the San Francisco hearings. First
lished was J. Edgar Hoover's analysis, *Communist
get — Youth, Communist Infiltration and Agitation
tics*, 86th Cong., 2d Sess. (1960). (250,000 copies, H.
601, 86th Cong., 2d Sess., 106 Cong. Rec. 18764 (1960);
Con. Res. 142, 87th Cong., 1st Sess., 75 Stat. 960; H.
. Res. 384, 87th Cong., 1st Sess., 75 Stat. 967.) Next
lished was a Committee report, which incorporated the
"Operation Abolition," and was entitled *Communist
Riots Against the House Committee on Un-American
ivities*, H. R. Rep. 2228, 86th Cong., 2d Sess. (1960).
000 copies, H. Res. 397, 87th Cong., 1st Sess., 107
g. Rec. 18582 (1961).) The hearings themselves were
lished in four parts and entitled *Northern California
rict of Communist Party, Structure, Objectives, Lead-
ip* (1960) (10,000 copies, H. Con. Res. 309, 87th Cong.,
Sess., 73 Stat. 963.) The entire story was repeated
ynopsis in the 1960 Annual Report of the Committee.
R. Rep. No. 2237, 86th Cong., 2d Sess. (1960).) (12,000
es, H. Res. 104, 87th Cong., 1st Sess., 107 Cong. Rec.
(1961); H. Res. 398, 87th Cong., 1st Sess., 107 Cong.
18582 (1961).) In late 1961 the Committee published
eport entitled *The Truth About the Film 'Operation
lition'*, H.R. Rep. No. 1278 (2 parts), 87th Cong., 1st
. (1961). (20,000 copies, H. Con. Res. 417, 87th Cong.,
Sess., 76 Stat. 1421.) About 1,300 copies of the film

"Operation Abolition" were sold by the end of 1961. (*The Truth about the Film 'Operation Abolition'*, *id.* at 41.)

Cumulative Index

In addition to the index which the Committee publishes in the back of each of its individual publications it also publishes periodically a cumulative index of all Committee publications. The first cumulative index to the publications of the Committee was published in 1953 and extended over 780 pages. (Committee on Un-American Activities, *Cumulative Index to Publications of the Committee on Un-American Activities* (1953).) The Committee published a supplement in 1961 covering the period 1955 to 1960. The 1961 Annual Report described the supplement as follows (H.R. Rep. 2559, 87th Cong., 2d Sess. (1962) p. 113-114):

> "A much needed supplementary cumulative index was printed in 1961, listing every hearing, report and consultation published by the Committee during the period 1955-1960, as well as the 14,312 individuals, 2,427 organizations, and 892 publications mentioned in them. The supplement reveals that during the 84th, 85th, and 86th Congresses the Committee published 99 hearings or parts of hearings and 67 reports and consultations or parts thereof.
>
> "In addition to the 14,312 persons listed in the supplementary index, hundreds of aliases attributed to many of these persons are included. The 2,427 figure for organizations does not include several thousands of their subsidiaries and affiliated groups which are listed in the index. There are, for example, 732 subdivisions and units listed in the index under 'Communist Party of the United States of America,' although only the party itself is included in the 2,427 figure.
>
> ". . . The only way to determine under what circumstances an individual, organization, or publication

was mentioned by or before the Committee would be to consult the original hearing or report in which the name appears."

Use of the Committee's Files

The present size of the Committee's files on individuals and organizations is not publicly known. As early as 1943, however, the materials collected by the Special Committee on Un-American Activities filled 135 filing cabinets and were tabulated and indexed on over 1,000,000 index cards. (89 Cong. Rec. 131 (1943).) In 1962 Congressman Walter explained the basic organization and use of these files in a letter to Representative Curtis which was published in the Congressional Record (108 Cong. Rec. 18280 (1962)):

> "First, I think it would be helpful to explain the two major categories of files maintained by the committee. One set, referred to as 'investigative' files, consists of 'lead' material and confidential reports of committee investigators. Information in these files is not used for regular reference purposes, and is available only to the staff. The other set, called 'public' files, consists of committee publications and information secured from public sources, such as newspapers, magazines, authenticated letterheads, and other documents available from public sources. Such material could be found by any competent researcher. The committee does not make its 'public' files available to the general public, but the Rules of the House of Representatives provide that 'such records shall be the property of the House and all Members of the House shall have access to such records.' (See rule XI, clause 26 (c).) In accordance with this provision, the committee maintains a reference service for Members of the House, through which information from these 'public' files may be furnished upon receipt of a written request, which becomes a part of the records. The courtesy has been extended to include Mem-

bers of the Senate. To assist the executive branch of the Government in the fulfillment of its responsibility under several laws relating to loyalty and security, the service has also been extended to authorized representatives of executive departments and agencies."

In each annual report the Committee makes a short statement about the extent to which the reference service based on these files is used by members of Congress and other agencies of the government.* The most thorough statement on this subject was contained in the 1955 Annual Report (H.R. Rep. No. 1648, 84th Cong., 2d Sess. (1956) pp. 33-35):

"The committee maintains a large collection of information on the subject of subversive activities covering, in general, the years 1938 to date, although there is a wealth of even older material on file.

"This valuable collection is maintained in order to furnish reference service not only to the committee's own members and staff for use as background material and actual exhibits in investigations and hearings but to every Member of Congress who submits a written request for information in this field.

"This reference service goes far beyond the ordinary type which simply points out the best sources of information to the person making inquiry. Whenever references to the subject under consideration are found in public source material, a written report of that information is furnished setting forth, point by point, what appears and where it appears, together with any pertinent citations by this committee or the Attorney General on every organization involved.

"Although the usefulness of this service cannot be judged entirely by statistics, the following figures do

* E.g., Committee on Un-American Activities, *Annual Report for the Year 1966,* H.R. Rep. No. 460, 89th Cong., 2d Sess. (1967) p. 40.

indicate that there is great interest in and need for the information. During 1955, more than 1,300 requests were received from the Members of Congress, necessitating a check of source material in the committee's public records, files, and publications for information on 4,325 individuals and 911 organizations, publications, and more general subjects. In 3,181 instances, information was found in committee records and was compiled into detailed reports sometimes as long as 12 to 15 pages on a single subject.

"The constant use of the collections by the committee's own employees can be only partially described by statistics. However, the reference section staff has supplied to other staff members written reports on 1,272 individuals and 58 organizations over the past 12 months, has given verbal answers on 2,072 persons and 1,011 organizations, and has searched out and supplied copies of 800 or more exhibits for use in investigations and hearings.

"Still another service of the reference section is furnished to designated representatives from various agencies of the executive branch of the Government, who are permitted, 4 days each week, to use the resources available here in making security checks. It has been necessary, because of comparatively limited space and facilities, to restrict the number of agents accredited for admission as well as the amount and type of reference service provided for them. However, the reference section staff has continued to point out sources of information and to answer their questions concerning committee records on an average of 12 or more times daily. A total of 3,500 visits by properly accredited Government agents has been recorded for 1955, which in 37 percent of the cases extended over the entire working day.

"While the use of this collection grows continually, so does its usefulness increase by proper maintenance and the careful processing and indexing of new additions. The care of such an extensive and varied amount of material is within itself a task, for *such material does not become obsolete and available for discard or*

storage, but tends to become more valuable and to require more careful handling as it increases in age and volume.

"New material, in order to be properly incorporated into the collection, available for immediate use in a variety of circumstances, and properly reported, must be exactly classified, thoroughly cross-referenced, and minutely indexed. Many thousands of original and microfilm or photostatic copies of periodicals, clippings, books, pamphlets, and other printed matter have been so processed and added to files in the past year. Among these, perhaps the most valuable were 215 rolls of microfilm which have for the first time provided a complete file of the issues of the Communist papers, *Daily Worker, Daily People's World, Midwest Record,* and *Western Worker,* as well as a number of other publications new to the committee's periodical files. The acquisition of microfilm has, moreover, released a small but important amount of space for other records, affording some temporary relief in the critical problem of housing a voluminous and ever-growing collection of material on a vitally important subject." (Emphasis added.)

In 1967 Chairman Willis indicated that not only are the files regularly used by the Committee but also by other agencies of the government (113 Cong. Rec. H3533 (1967)):

"Our files are searched four days a week, on a full-time basis, by 8 to 15 representatives of certain Federal departments and agencies. Representatives of other agencies do the same type of work at the Committee offices on an irregular basis."

Mr. Willis indicated that 27 government departments or agencies send personnel to search the Committee files. Searches were made by Committee employees on behalf of fourteen other agencies and departments as well as various Congressional Committees. (113 Cong. Rec. 3533 (Daily ed. April 5, 1967).)

On March 13, 1968, Rep. Don Edwards inserted into the Congressional Record letters from a number of government agencies which indicated that the Federal Personnel Manual requires that the Committee's files be checked for certain types of employees. (114 Cong. Rec. H1889-91 (Daily ed. March 13, 1968).)

The Committee's files have served a number of other purposes. In 1959 the Committee subpoenaed over 100 California teachers to a hearing. The Committee decided to cancel the hearings and to "transmit to the Boards of Education for the School Districts employing subpoenaed teachers the names of such teachers so that they might be interrogated by such Boards which would then transmit to the Committee a copy of the transcript of the proceedings." (Francis E. Walter, 106 Cong Rec. 17042 (1960).) It was also determined to send to the Boards of Education Committee information regarding the teachers. *(Ibid.)* When the American Civil Liberties Union in Southern California sought to enjoin these proposed actions, the Committee transmitted files on more than 90 teachers to the State Superintendent of Public Instruction. "The San Francisco Chronicle quoted William A. Wheeler, the Committee's investigator, as stating that the files were delivered to the Superintendent in order to 'beat' the injunction. (106 Cong. Rec. 8652 (1960).) When asked on the floor of Congress whether the fact that over 90% of the teachers subpoenaed were not fired by their local school boards indicated that they were not Communists, Congressman Walter answered (106 Cong. Rec. 17045 (1960)):

> "It does not prove that at all. It simply proves that the school authorities were derelict in their duty or they did not make use of the furnished information."

The firing of at least one teacher can be directly attributed to the Committee's release of these files. (See

Huntington Beach Union High School District v. *Collins*, 202 Cal. App. 2d 677; 21 Cal. Rptr. 56, *cert. denied*, 371 U.S. 904 (1962).)

Each report made by the Committee begins with the following caveat:

> "The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated." (*E.g.*, 109 Cong. Rec. 13592.)

Committee dossiers on individuals have been placed in the Congressional Record. For example:

In 1961 Rep. Bruce set out in the Record dossiers on the leaders of the National Committee to Abolish the Un-American Activities Committee. (107 Cong. Rec. 7239 *et seq.* (1961).)

The same year Rep. Walter gave a speech on the floor of the House responding to a book entitled *The Un-Americans* and inserted into the *Record* dossiers of the author and another attorney. (107 Cong. Rec. 12721 *et seq.* (1961).)

In 1959 Rep. Walter in a speech on the floor of the House summarized dossiers of 34 artists whose works were being shown in the American National Exhibition in Moscow by the United States Information Agency. (105 Cong. Rec. 9746-48 (1959).) (See also 108 Cong. Rec. 3521-23 (1962) (eight artists including Alexander Calder).)

In 1960 Senator Eastland placed into the Record Committee dossiers on 13 sociologists whose works were relied upon by the United States Supreme Court in *Brown*

v. *Board of Education*, 347 U.S. 438 (1954). (106 Cong. Rec. 4031-37 (1960).)

In 1962 Rep. Walter had used the Committee's files in order to attack W. H. Ferry, an officer of the Fund for the Republic. (108 Cong. Rec. 23645, *et seq.* (1962).)

In 1956 and in 1963, Rep. E. C. Gathings of Georgia placed into the Congressional Record 30 pages of dossiers on leaders of the National Association for the Advancement of Colored People. Among those listed as "not necessarily Communist" were Ralph Bunche, Robert C. Weaver, Roy Wilkins, W. E. B. DuBois, A. Philip Randolph, Norman Cousins, Milton Konvitz, Morris L. Ernst, Karl Llewellyn and Clarence Mitchell. (109 Cong. Rec. 13591, 13593, 13596, 13603-07, 13614-16, 13620 (1963).)

In 1962 and 1963 Rep. Thomas B. Curtis set out in the Congressional Record a series of letters documenting non-official, defamatory use of Committee dossiers. (108 Cong. Rec. 3776-79, 18279-82 (1962); 109 Cong. Rec. 4627-29, 7258-59 (1963).) A Missouri churchman wrote to Rep. Curtis saying that he and others had been defamed by another's use of information obtained from the files of the Committee. He cited a number of instances of dossiers being published without the caveat that the Committee had not evaluated the material. When Rep. Curtis asked Chairman Walter about the Committee's attitude in these matters, Walter replied (108 Cong. Rec. 18280-81 (1962)):

> "Typewritten reports prepared in response to individual requests for information fall into an entirely different category. They do not express official opinions of the committee, and must, therefore, be written as nothing more than compilations of information from public sources in our files—without added comment or evaluation. *Evaluation and use of the in-*

formation become the responsibility of the recipient. Information furnished by the committee to a Member of Congress may or may not be passed on to a constituent. Disposition of the report is subject to discretion of the Member, and the committee has no power to control the action he may take. It follows, therefore, that the committee should not be held responsible for the use or abuse of these reports beyond the point of furnishing them to Members.

* * *

"I am sure that you realize it would be a virtually impossible task to 'prove' the many thousands of references in our files, even if we did not have the problem of limited personnel. Moreover, it is not a function of the committee. If, for instance, an official letterhead of a cited organization has listed an individual as a sponsor, the House has not required that the committee prove, before reporting the reference, that the person actually consented to be a sponsor. It would obviously be absurd to suggest that the committee, before complying with a Member's request for a report on an individual, should undertake to prove all references to be reported (which in many instances would involve several hundred items)." (Emphasis added.)

The next year the same churchman forwarded to Rep. Curtis a copy of a defamatory letter addressed to all the members of the Missouri State Legislature which stated that the information had been supplied by Chairman Walter. In a subsequent investigation Rep. Curtis determined that an evaluation of the Committee's dossier would reveal that the persons defamed had no connection with communism or the Communist Party.

In 1965, Carter Glass III, a newspaper editor, testified in the case of *Commonwealth of Virginia* v. *Wansley*. He stated that he had accumulated a file on every "Com-

munist front" individual whose name appeared in the newspaper which he edits and that in addition to getting his information from published reports of the Committee he also had the Committee's files searched for specific individuals at his request through Rep. Tuck. (A portion of this testimony is set out in 114 Cong. Rec. 1888-89 (Daily ed. March 13, 1968).)

LEGISLATIVE PRODUCT OF THE COMMITTEE

It has been claimed that the Committee has failed to produce useful legislation in proportion to the amount of time and money spent on its hearings and considering the kinds of consequences often suffered by persons called by or named before the Committee. In response to these criticisms, at the Committee's request the Legislative Reference Service of the Library of Congress in 1958 published a study of the legislative recommendations of the Committee as well as the success of the Committee in having them enacted into law. Legislative Reference Service, *Legislative Recommendations by the House Committee on Un-American Activities*, 86th Cong., 2d Sess. (rev'd ed 1960).

After reveiwing the report, Rep. Ryan of New York gave the following comment on the floor of the House (107 Cong. Rec. 2982-83 (1961)):

> "The primary business of any standing committee of the House should be legislation. In recent years the committee has become increasingly sensitive to the criticism that it has not served a useful legislative purpose. As a result the committee requested the Legislative Reference Service of the Library of Congress to prepare a list of the legislative recommendations made by the committee since 1941. Let us closely examine this record. The report entitled Legislative Recommendations by the House Committee on Un-American Activities appeared in 1958 and contains every legislative recommendation by the committee from 1941 to 1958.
>
> "The report lists 79 recommendations but 34 are identical, having been made in more than one session of Congress. The report indicates whether legislative or executive action was taken on the recommendations.
>
> "Thirty recommendations were relevant to six statutes: the Internal Security Act of 1950; the Immigra-

tion and Nationality Act of 1952; the Espionage and Sabotage Act of 1950; and the act of August 1, 1956, providing for the registration of individuals trained in foreign espionage schools. Of these six acts, only two were handled by the committee—the Internal Security Act of 1950 and the Communist Control Act of 1954. The other four were considered by the Judiciary Committee.

"Five recommendations were reported out by the Judiciary Committee and concern either statutes of limitations or penalties for various criminal offenses.

"It is significant that since its inception the committee has been responsible for only two acts—the Internal Security Act of 1950 and its 1954 amendments.

"Perhaps the most effective criticism of these acts is that they are totally ineffective. Apparently no individual or organization has ever complied with the provisions of these acts.

"In 1960 the legislative recommendation publication was brought up to date. For the period 1958-60 the committee lists 50 recommendations, and the report cites 31 bills introduced to the House. None were enacted. Out of approximately 12,000 bills filed during the 86th Congress in the House of Representatives, 11 were referred to the committee. The 11 represented nine-tenths of 1 percent of the total legislative work product. Does this justify the committee's existence? From 1950 through 1959 the committee did not hold one hearing on specific legislation."

A careful analysis of this report along with the subsequent annual reports of the Committee through 1966 indicates that the Committee's actual legislative product is very much smaller than found by the Legislative Reference Service. In fact, the Committee's publications claim only 32 different enactments. Of these, seven are contained in the McCarran-Walter Immigration and Nationality Act of 1952, and nine are contained in the Internal Security Act of 1950. (Four of the McCarran-Walter Act sections superseded sections of the Internal Security Act of 1950.)

A summary of the Committee's legislative product follows:

McCarran-Walter Immigration and Nationality Act of 1952, 8 U.S.C. §§1101 et seq. The Committee takes credit for seven provisions of the Act relating to subversive and un-American activities. The enactment of this major revision of the immigration law would seem more properly attributable to Representative Walter's position as Chairman of the House Committee on Immigration and Nationality.

Internal Security Act of 1950, 50 U.S.C. §781 et seq. This legislation was to be a comprehensive act requiring disclosure and regulation of the Communist Party of the United States of America. But the act has been ineffective because the courts have held that to require compliance with the registration requirements would violate the registrant's rights under the Fifth Amendment. *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70 (1965); *Communist Party of the United States* v. *United States,* 331 F.2d 807 (D.C.Cir. 1963), *cert. den.* 377 U.S. 968 (1964). Section 5(1)(D) of the Act, 50 U.S.C. §784(a)(1)(D), was held unconstitutional in *United States* v. *Robel,* 389 U.S. 258 (1967), see below. Section 6, 50 U.S.C. §785, prohibiting the application for or use of passports by members of Communist action organizations, was held to be unconstitutional on its face in *Aptheker* v. *Secretary of State,* 378 U.S. 500 (1964).

18 U.S.C. §3291. This statute established a ten-year statute of limitations for certain crimes relating to citizenship and naturalization and passports and visas. The usual statute of limitations under the federal Criminal Code for these crimes would be five years.

38 U.S.C. §1789. This section of the War Orphans Educational Assistance Act prohibits using educational benefits for war orphans at institutions on the Attorney General's list of subversive organizations. (See Executive Order 10450 §12.) The Committee claims this provision as a successor to Section 228 of the Veterans' Readjustment Assistance Act of 1952 which had a similar provision with regard to veterans' educational benefits. Both provisions are considerably narrower than the Committee recommendation which was as follows (Legislative Reference Service, *Legislative Recommendations by the House Committee on Un-American Activities,* 86th Cong., 2d Sess. (1960), p. 1):

> "Withhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body of these educational institutions."

Communist Control Act of 1954, 50 U.S.C. §§841-44. This statute contains a Congressional finding regarding the Communist Party of the United States and deprives it of all "rights, privileges, and immunities" under law. Members of the Party are declared to be members of a Communist action organization for purposes of the Internal Security Act. This statute has had only one application. See *Salwen* v. *Rees,* 16 N.J. 216, 108 A.2d 265 (1954). But consider *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70 (1965).

Espionage and Sabotage Act of 1954, Section 201, amending 18 U.S.C. §794. This statute increases the penalty for peace-time espionage and alters the sentencing authority for espionage by increasing the penalty to death or life imprisonment or any term of years.

Act of August 20, 1954, amending 18 U.S.C. §3486. This statute permits the granting of immunity from prosecution after the Fifth Amendment privilege has been claimed.

Act of June 30, 1954, 18 U.S.C. §798. Extends the expiration date of a specific espionage statute, 18 U.S.C. §794, until six months after the termination of the national emergency period proclaimed on December 16, 1950.

Communist Control Act of 1954, §13 A(e) as amended by the Act of July 26, 1955, 50 U.S.C. §792a(e). The report of the Legislative Reference Service refers particularly to section 792a(e)(1) providing that the Subversive Activities Control Board shall give consideration to Communist Party membership of an organization's officers within the past three years in determining whether an organization is Communist infiltrated.

Act of August 1, 1956, 50 U.S.C. §851 et seq. This statute requires the registration of persons engaged in or trained in espionage, sabotage or similar fields by a foreign government. The constitutionality of the aspects of this statute requiring disclosure of criminal activity is brought into question by the recent decisions in *United States* v. *Jackson*, 390 U.S. 570 (1968); *Marchetti* v. *United States*, 390 U.S. 39 (1968).

Act of July 24, 1956, amending 18 U.S.C. §§2384-85. This statute increases penalties for seditious conspiracy and advocating the overthrow of the government.

Labor Management Reporting and Disclosure Act of 1959, §504, 29 U.S.C. §504. The statute prohibits persons who have been members of the Communist Party within the previous five years from serving as union officers. The provision was declared unconstitutional in *United States* v. *Brown*, 381 U.S. 437 (1965).

Public Law 87-301 adding 8 U.S.C. §§349(c), 1105a. These sections place the burden of proof on the question of loss of nationality on the government and also relate to the exclusiveness of judicial review on deportation orders. The committee report on the bill was issued by the House Committee on the Judiciary rather than the Committee on Un-American Activities.

Public Law 87-369 repealing 18 U.S.C. §791. This statute ended the limitation of the espionage and censorship provisions of the criminal code to the Admiralty and Maritime jurisdiction of the United States. This bill was reported by the Committee on the Judiciary.

Public Law 87-486 amending 18 U.S.C. §2385. This statute defines the term "organize" in the Smith Act so as to avoid this Court's construction that the term referred only to acts entering into the creation of a new organization. See *Yates* v. *United States,* 354 U.S. 298 (1957).

Public Law 87-793, §305, adding 39 U.S.C. §4008. This statute permitted the Postmaster General to detain Communist propaganda sent through the mails and to determine whether the recipient wanted to receive the materials. The statute was declared unconstitutional in *Lamont* v. *Postmaster General of the United States,* 381 U.S. 301 (1965).

Public Law 88-290, adding 58 U.S.C. §831 et seq. The statute relates to security clearances for employees of the National Security Agency.

Public Law 87-474, §1(b) amending 50 U.S.C. §784. This statute relieves the Secretary of Defense of the obligation to publish a list of those defense facilities at which members of Communist-action organizations are prohibited from employment. This statute removed a deficiency from the Communist Control Act of 1954. The provision had

been rendered moot since 50 U.S.C. §784(a)(1)(D) was declared unconstitutional in *United States* v. *Robel,* 389 U.S. 258 (1967).

P.L. 90-237, amending the Internal Security Act of 1950. The act, inter alia, amends the Internal Security Act of 1950 to establish a system of public disclosure of Communist and Communist-front organizations and their members, requires the disclosure of Communist organizations using the mail to solicit money, provides a grant of immunity for compulsory testimony and production of evidence over self-incrimination claims, and prescribes penalties for misbehavior in the presence of the Subversive Activities Control Board.

The Committee has also claimed responsibility for approximately eleven executive orders dealing, inter alia, with immigration, international travel, and loyalty and security programs within the executive department of the government.

LIST OF HEARINGS OF UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON UN-AMERICAN ACTIVITIES, JANUARY 1, 1946 TO DECEMBER 31, 1967*

Hearing Number

Dates — *Title*

1. Jan. 30, 1946 — Hearings on Gerald L. K. Smith
   City — Washington, D.C.

2. Apr. 4, 1946 — Investigation of Un-American Propaganda Activities in the United States — Executive Board Refugee Committee. *City*—Washington, D.C.

3. Nov. 22, 1946 — Investigation of Un-American Propaganda Activities in the United States — Louis F. Budenz. *City* — Washington, D.C.

4. Feb. 6, 1947 — Investigation of Un-American Propaganda Activities in the United States—Gerhart Eisler.
   City — Washington, D.C.

5. Feb. 27, July 23-25, 1947 — Hearings regarding Communism in labor unions in the United States.
   City — Washington, D.C.

6. Mar. 5, 21, 1947 — Hearings regarding Leon Josephson and Samuel Liptzen. *City* — New York, N.Y.

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* This is a list of all those Committee publications entitled "hearings" and does not include transcripts of testimony contained in documents entitled "report" or "consultation."

7. Mar. 24-28, 1947 — Investigation of Un-American Propaganda Activities in the United States—Hearings on H.R. 1884 and H.R. 2122.
City — Washington, D.C.

8. Mar. 24, 1947 — Testimony of William C. Bullitt.
City — Washington, D.C.

9. Mar. 26, 1947 — Testimony of J. Edgar Hoover.
City — Washington, D.C.

10. Apr. 9, 1947 — Investigation of Un-American Propaganda Activities in the United States—Eugene Dennis
City — Washington, D.C.

11. July 21, 1947 — Testimony of Walter S. Steele.
City—Washington, D.C.

12. July 22, 1947 — Testimony of Victor Kravchenko.
City—Washington, D.C.

13. Sept. 24-26, 1947—Hearings regarding Hans Eisler.
City — Washington, D.C.

14. Oct. 20-24, 27-30, 1947 — Hearings regarding Communist infiltration of the motion picture industry.
City — Washington, D.C.

15. Feb. 5-6, 9-11, 19-20, 1948 — Hearings on proposed legislation to curb or control the Communist Party of the United States. *City*—Washington, D.C.

16. July 1, Sept. 10, 1948; Apr. 22, 26, May 25, June 10, 14, July 1, Aug. 14, 26, Sept. 10, 14, 27, 1949; Dec. 20-22, 1950 — Hearings regarding Communist infiltration of radiation laboratory and atomic bomb project at University of California, Berkeley, Calif. Parts 1-3. *City*—New York, N.Y.; Berkeley, Calif.

17. July 30, Aug. 7, 1948 — Hearings regarding Communism in the United States Government.
City — Washington, D.C.

18. July 30, Aug. 7, 1948; Apr. 20-21, 25, 29, May 4-6, June 8, Aug. 28, 31, Sept. 1, 15, 1950 — Hearings regarding Communism in the United States Government, Parts 1-2. *City*—Washington, D.C.

19. July 31, Aug. 3-5, 7, 9, 10-13, 16-18, 20, 24-27, 30, Sept. 8-9, Dec. 7, 10, 14, 1948 — Hearings regarding Communist espionage in the United States Government, Parts 1-2. *City*—Washington, D.C.

20. Sept. 9, 14, 16, 1948 — Excerpts from hearings regarding investigation of Communist activities in connection with the atom bomb. *City*—Washington, D.C.

21. Mar. 31, Apr. 1, 1949 — Documentary testimony of Gen. Izyador Modelski. *City*—Washington, D.C.

22. May 6, 1949 — Testimony of Paul Crouch.
City — Washington, D.C.

23. May 24, 1949 — Hearings regarding Clarence Hiskey including testimony of Paul Crouch.
City — Washington, D.C.

24. May 24-25, June 9, 1949 — Testimony of Philip O. Keeney and Mary Jane Keeney and statement regarding their background. *City* — Washington, D.C.

25. May 27, July 6, 1949 — Hearings regarding Toma Babin. *City* — Washington, D.C.

26. June 6, 1949 — Soviet Espionage Activities in connection with Jet Propulsion and Aircraft.
City — Washington, D.C.

27. June 8, 1949 — Hearings regarding Steve Nelson.
City — Washington, D.C.

28. June 28, 29, July 6, 12, 28, 1949; Dec. 6, 11-13, 1950; July 14-15, 1954 — Hearings regarding Communism in the District of Columbia. Parts 1-3.
City — Washington, D.C.

29. July 13-14, 18, 1949; Sept. 1, 1950 — Hearings regarding Communist infiltration of minority groups. Parts 1-2. *City*—Washington, D.C.

30. Aug. 9-11, Dec. 5-6, 13, 1949; Aug. 29-30, 1950 — Hearings regarding Communist infiltration of Labor Unions, security measures relating to officials of the UERMWA-CIO. *City* — Washington, D.C.

31. Aug. 14, Oct. 15, 1949 — Testimony of James Sterling Murray and Edward Tiers Manning (regarding Clarence Hiskey and Arthur Adams).
City — Washington, D.C.

32. Nov. 8, Dec. 2, 1949; Feb. 27, Mar. 1, 1950 — Hearings regarding Communist Espionage.
City — Washington, D.C.

33. Dec. 5, 7, 1949; Jan. 23-26, Mar. 2-3, 7, 1950 — Hearings regarding shipment of atomic material to the Soviet Union during World War II.
City — Washington, D.C.

34. Feb. 21-23, Mar. 13-14, 24-25, June 22, Sept. 28, Oct. 13, 21, 1950—Expose' of the Communist Party of Western Pennsylvania, Parts 1-3. *City* — Pittsburgh

35. Mar. 21-23, 28-30, April 4, May 2-4, 1950—Hearings on legislation to outlaw un-American and subversive activities. *City*—Washington, D.C.

36. Apr. 10-15, 17-19, 1950 — Hearings regarding Communist activities in the Territory of Hawaii, Parts 1-4. *City* — Honolulu, Hawaii

37. June 21, 1950 — Testimony of Philip A. Bart (general manager of Freedom of the Press, publishers of the Daily Worker, official organ of the Communist Party) and Marcel Scherer (coordinator, New York Labor Conference for Peace and formerly district representative of District 4, United Electric Radio and Machine Workers of America, CIO).
City — Washington, D.C.

38. July 12-15, Aug. 8, 1950 — Hearings regarding Communist activities in the Cincinnati, Ohio, area, Part 1.
City — Washington, D.C.

39. July 26, Aug. 30, Oct. 18-19, Dec. 4, 1950 — American *Aspects of Assassination* of Leon Trotsky.
City — Washington, D.C.

40. Sept. 22, 1950 — Testimony of Hazel Scott Powell.
City—Washington, D.C.

41. Oct. 27, Dec. 21, 1950 — Testimony of Edward G. Robinson. *City*—Washington, D.C.

42. Feb. 28, Mar. 9, 1951 — Hearings regarding Communist Activities among farm groups.
City — Washington, D.C.

43. Mar. 8, 21, Apr. 10-13, 17, 23-25, May 10, 16-18, 22-25, June 25, 26, Sept. 10-12, 17-21, 24-25, 1951; Jan. 24, 28, Feb. 5, Mar. 20, Apr. 10, 30, May 19-21, Aug. 19, Sept. 29, Nov. 12-13, 1952 — Communist infiltration of Hollywood motion-picture industry, Parts 1-10.
City—Washington, D.C.; Los Angeles, Calif.; Hollywood, Calif.

44. Mar. 14, Aug. 20-23, 1951 — Testimony of Oliver Edmund Clubb. *City* — Washington, D.C.

45. Mar. 21, 1951; Dec. 22, 1952; Feb. 17, Mar. 12, 23-28, Apr. 7-8, 13, June 2, Sept. 4, Nov. 23, Dec. 16, 1953 — Investigation of Communist Activities in Los Angeles.
City — Los Angeles, Calif.

46. June 11, 1951 — Investigation of Communist activities in the District of Columbia—Maryland area.
City—Washington, D.C.

47. June 19-21, 26-28, July 10-13, 1951 — Hearings relating to Communist activities in the defense area of Baltimore, Part 1 (based on the testimony of Mary Stalcup Markward), Parts 2-3.
City — Baltimore, Md.

48. July 13, 1951 — Communist tactics among veterans' groups. *City*—Washington, D.C.

49. July 23-24, Oct. 10-11, 1951—Expose' of Communist activities in the State of Massachusetts (based on the testimony of Herbert A. Philbrick).
City — Washington, D.C.

50. Aug. 9, 22-23, 1951 — Hearings on American aspects of the Richard Sorge spy case.
City—Washington, D.C.

51. Jan. 9-10, 15-17, 1952 — The role of the Communist press in the Communist conspiracy.
City — Washington, D.C.

52. Jan. 21-26, Apr. 9, May 22, July 8, Sept. 30, Oct. 1-3, 6-7, 1952 — Communist activities among professional groups in the Los Angeles area, Parts 1-4.
City—Washington, D.C.; Los Angeles, Calif.

53. Feb. 6-7, 1952—Communist activities among youth groups. *City*—Washington, D.C.

54. Feb. 14, 1952 — Testimony of Lynne L. Prout. *City*—Washington, D.C.

55. Feb. 25-29, Mar. 10-12, Apr. 29-30, 1952 — Communism in the Detroit area, Parts 1-2. *City*—Detroit, Mich.

56. May 6, June 10, 23, 1952 — Methods of Communist infiltration in the United States Government. *City* — Washington, D.C.

57. Sept. 2-5, 1952 — Communist activities in the Chicago area, Parts 1-2. *City*—Chicago, Ill.

58. Sept. 5, 1952 — Testimony of Dr. Edward U. Condon. *City* — Chicago, Ill.

59. Oct. 3, 1952; Mar. 16, May 28, June 2, 9, 14-19, 1954— Investigation of Communist activities in the Pacific Northwest. *City*—Chicago, Ill.; Los Angeles, Calif.; Washington, D.C.; Seattle, Wash., Portland, Ore.

60. Oct. 13, 1952 — Testimony of Gen. Walter Bedell Smith. *City* — Washington, D.C.

61. Oct. 13-16, 1952 — Communist activities in the Philadelphia area. *City* — Philadelphia, Pa.

62. Dec. 12, 1952 — Investigation of Communist Activities in Los Angeles. *City* — Los Angeles, Calif.

63. Feb. 25-27, Mar. 12-13, 17-18, Apr. 14, 16, 21-23, 27, 29, May 15, 19, 26-28, June 8, 22, 24, 29, July 1, 1953; Apr. 12, June 28-29, 1954 — Communist Methods of Infiltration (Education). *City* — Washington, D.C.

64. Apr. 17, May 14, June 9, July 20, Sept. 15, 1953; Jan. 15, Dec. 13, 1954 — Communist Methods of Infiltration (Government—Labor). *City* — Washington, D.C.

65. May 4-7, July 6-7, 13-14, 1953 — Investigation of Communist Activities in New York. *City*—New York, N.Y.

66. May 13-14, 1953 — Hearings on Soviet schedule for War, 1955. *City* — Washington, D.C.

67. June 8, 1953 — Investigation of Communist Activities in Michigan. *City* — Lansing, Mich.

68. June 15, 1953; Mar. 3-6, 16, May 3-6, July 25, 27-29, Aug. 1, 15-18, Oct. 14, 1955 — Investigation of Communist Activities, New York, Parts 1-8. *City*—Washington, D.C.; Hollywood, Calif.; New York, N.Y.

69. June 17-18, 1953 — Investigation of Communist Activities in Columbus, Ohio. *City* — Columbus, Ohio

70. July 1, 1953 — Hearings on Franciszek Jarecki — Flight to Freedom. *City* — Washington, D.C.

71. July 13-16, 1953; Apr. 7-9, 1954 — Investigation of Communist Activities in Albany, N.Y. *City* — Albany, N.Y.

72. July 21, 1953 — Testimony of Bishop G. Bromley Oxnam. *City* — Washington, D.C.

73. July 30-31, 1953 — Hearings regarding Jack R. McMichael. *City* — Washington, D.C.

74. Sept. 11, 1953; Feb. 1, 24, Mar. 1, 12, 14, 17, 19-22, Apr. 12, 14, 19-23, Sept. 17, 1954 — Investigation of Communist Activities in the State of California. Parts 1-11. *City* — Washington, D.C.; Los Angeles, Calif.; San Diego, Calif.

75. Sept. 24, 1953 — Testimony of Dr. Marek Stanislaw Korowicz. *City* — Washington, D.C.

76. Nov. 16-18, 1953; Feb. 16-17, July 30, 1954 — Investigation of Communist Activities in Philadelphia, Pa., Parts 1-5. *City* — Philadelphia, Pa.

77. Dec. 1-5, 1953 — Investigation of Communist Activities in the San Francisco Area.
City — San Francisco, Calif.

78. Dec. 16, 1953; June 27-30, July 1-2, Oct. 13, 1955; Apr. 16-17, 19-21, June 6, July 5, 1956 — Investigation of Communist Activities in the Los Angeles, California Area. Parts 1-5, 7-11.
City — Los Angeles, Calif.

79. Jan. 13, 18, Dec. 14-15, 1954 — Communist Methods of Infiltration (Entertainment).
City — Washington, D.C.

80. Mar. 15-16, Apr. 29, 1954 — Investigation of Communist Activities in the Chicago Area.
City — Washington, D.C.; Chicago, Ill.

81. Mar. 25-26, May 18, 1954 — Investigation of Communist Activities in Baltimore Area.
City — Baltimore, Md.

82. Apr. 28-30, May 3-5, 7, 10-14, Nov. 17-19, 1954 — Investigation of Communist Activities in State of Michigan. Parts 1-12. *City* — Detroit, Lansing, Flint, Mich.; Washington, D.C.

83. July 8, 15, 1954 — Investigation of Communist Influence in the Field of Publications.
City — Washington, D.C.

84. July 12, 1954 — Hearings on Communist Activities among youth groups. *City* — Washington, D.C.

85. Sept. 13-15, Nov. 17-19, 1954 — Investigation of Communist Activities in Dayton, Ohio.
City — Dayton, Ohio; Washington, D.C.

86. Nov. 29-30, Dec. 1, 1954 — Investigation of Communist Activities in the State of Florida. *City* — Miami, Fla.

87. Feb. 28, Mar. 1, Apr. 25, 1955 — Investigation of Communist Activities in the Fort Wayne, Ind. Area.
City — Washington, D.C.

88. Mar. 17-19, June 1-2, 1955 — Investigation of Communist Activities in the Seattle, Wash. area—Parts 1-3. *City* — Seattle, Wash.; Washington, D.C.

89. Mar. 28-30, May 3, 1955 — Investigation of Communist Activities in the Milwaukee, Wis. Area, Parts 1-2. *City* — Milwaukee, Wis.

90. May 16-19, July 13, 1955; July 24, 1957 — Hearings on investigation of Communist Activities in the Newark, N.J., area. Parts 1-2, and Supplement.
City — Newark, N.J.

91. July 5-6, 1955 — Investigation of Communist Activities in the San Diego, Calif. Area.
City — San Diego, Calif.

92. July 13, 1955 — Investigation of Communist Activities in the Ohio Area. (Testimony of Keve Bray.)
City — Washington, D.C.

93. Aug. 2-5, 1955 — Investigation of Communist Activities (The Committee to Secure Justice in the Rosenberg Case and Affiliates). Parts 1-2.
City — Washington, D.C.

94. Dec. 13-15, 1955; Feb. 14-16, 21, 23-24, 28-29, Mar. 1, June 20, 28, 1956 — Investigation of Communist Infiltration of Government. Parts 1-6.
City — Chicago, Ill.; Washington, D.C.

95. Feb. 28, 1956; Oct. 7, 8, 9, Nov. 29, 1957; Feb. 25, 1958 — Investigation of Soviet Espionage. Parts 1-2.
City — Washington, D.C.

96. Mar. 12-14, 1956 — Investigation of Communist Activities in North Carolina Area. *City*—Charlotte, N.C.

97. May 10-11, 1956 — Hearings on Attempts at Subversion and Espionage by Diplomatic Personnel. *City* — Washington, D.C.

98. May 15-18, 1956 — Investigation of Communist Activities in the Rocky Mountain Area. Parts 1-2. *City* — Denver, Colo.

99. May 23, 25, June 12-14, 21, 1956; July 26, 1957 — Investigation of the Unauthorized Use of United States Passports. Parts 1-5. *City*—Washington, D.C.

100. June 2, 4-6, 8, 1956 — Investigation of Communist Activities in the St. Louis, Mo. Area. Parts 1-4. *City* — St. Louis, Mo.

101. June 13, July 17, Dec. 10-11, 1956; Feb. 14, Mar. 12-14, 26-27, Oct. 1, 1957; June 11-12, 1958 — Investigation of Communist Propaganda in the United States. Parts 1-9. *City* — Washington, D.C.; Chicago, Ill.; Buffalo, New York, N.Y.; New Orleans, La.; Philadelphia, Pa.; San Francisco, Calif.

102. June 18-19, 1956 — Investigation of Communist Propaganda Among Prisoners of War in Korea. (Save Our Sons Committee.) *City* — Washington, D.C.

103. July 10-13, 17-18, 1956 — Investigation of So-Called Blacklisting in Entertainment Industry—Report of the Fund for the Republic, Inc. Parts 1-3. *City* — Washington, D.C.

104. July 18, 1956 — Investigation of the Award by the Fund for the Republic, Inc. (Plymouth Meeting, Pa.) *City* — Philadelphia, Pa.

105. Sept. 10-11, 1956; Feb. 26-27, 1957 — Investigation of Communist Activities in the New Haven, Conn. Area. Parts 1-3. *City* — New Haven, Conn.

106. Sept. 10-11, 1956 — International Communism (Testimony of Ernest Tillich). *City* — Washington, D.C.

107. Nov. 12-14, 28, Dec. 3-4, 5-8, 11, 13-14, 1956 — Communist Political Subversion. Parts 1-2. *City*—Washington, D.C.; Youngstown, Ohio; Chicago, Ill.; Los Angeles, San Francisco, Calif.; Seattle, Wash.

108. Nov. 26-27, 1956 — Investigation of Communist Activities in the Youngstown and Northern Ohio Areas. *City* — Youngstown, Ohio

109. Jan. 30, 1957 — International Communist Propaganda Activities. *City* — Washington, D.C.

110. Feb. 1, 1957 — International Communism—Red China and the Far East. (Testimony of Chiu-Yuan Hu.) *City* — Washington, D.C.

111. Feb. 7-8, Apr. 9-12, 1957 — Investigation of Communism in the Metropolitan Music School, Inc. and Related Fields. Parts 1-2. *City* — New York, N.Y.

112. Feb. 15, 1957 — Investigation of Communist Activities in the New Orleans, La., Area. *City* — New Orleans, La.

113. April 1, 1957; May 8, June 18-19, 1958 — Communism in the New York Area—Entertainment. *City* — New York, N.Y.

114. May 7, 8, 9, 1957 — Investigation of Communist Activities in the Baltimore, Md. Area. Parts 1-2. *City* — Baltimore, Md.

115. June 18-21, 1957 — Hearings held in San Francisco, Calif. Parts 1-2. *City* — San Francisco, Calif.

116. July 17-19, Aug. 2, 9, Oct. 9, 1957 — Investigation of Communist Penetration of Communications Facilities. Parts 1-2. *City* — Washington, D.C.

117. Oct. 2-4, 1957 — Investigation of Communist Propaganda in the United States in the Buffalo, New York Area. Parts 1-2. *City* — Buffalo, N.Y.

118. (Hearing 118 included as part of Hearing 101.)

119. Oct. 7-9, Nov. 20, 1957 — Investigation of Soviet Espionage. *City* — Washington, D.C.

120. Feb. 10-11, 1958 — Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind. Area). *City* — Gary, Ind.

121. March 14, 18-21, 1958 — Investigation of Communist Activities in the New England Area. Parts 1-3. *City* — Washington, D.C.; Boston, Mass.

122. July 29-31, 1958 — Communist Infiltration and Activities in the South. *City* — Atlanta, Ga.

123. Sept. 3-5, 1958 — Communist Infiltration and Activities in Newark, N.J. *City* — Newark, N.J.

124. Sept. 2-5, 1958; Feb. 24, 25, 1959 — The Southern California district of the Communist Party; Structure—Objectives—Leadership. Parts 1-3. *City* — Los Angeles, Calif.

125. Mar. 10-12, 1959 — Current Strategy and Tactics of Communists in the United States (Greater Pittsburgh Area, Part 1). Problems of Security in Industrial Establishments Holding Defense Contracts (Greater Pittsburgh Area, Part 2). Problems Arising in Cases of Denaturalization and Deportation of Communists (Greater Pittsburgh Area, Part 3). *City* — Pittsburgh, Pa.

126. Mar. 17, 1959 — The Kremlin espionage and terror organizations—Testimony of Peter S. Deriabin. *City* — Washington, D.C.

127. Apr. 21-24, June 5, 1959 — Passport Security—Part 1 (Testimony of Harry R. Bridges). Passport Security—Part 2. *City* — Washington, D.C.

128. May 5-7, 1959 — Communist Infiltration of Vital Industries and Current Communist Techniques in the Chicago, Ill. Area. *City* — Chicago, Ill.

129. July 1, 1959 — The American National Exhibition, Moscow, July, 1959. *City* — Washington, D.C.

130. July 21, 22, 1959; Feb. 2-5, Mar. 2, 1960 — Communist Training Operations. Parts 1-3. *City* — Washington, D.C.

131. July 22, 1959 — Testimony of Clinton Edward Jencks. *City* — Washington, D.C.

132. Sept. 22, 1959 — Testimony of Arnold Johnson, Legislative Director of the Communist Party, U.S.A. *City* — Washington, D.C.

133. Oct. 20-22, 1959 — Western Section of the Southern California District of the Communist Party—Parts 1-3. *City* — Los Angeles, Calif.

134. Nov. 16-17, 18-20, 1959—Communist Activities Among Puerto Ricans in New York City and Puerto Rico (New York City) Part 1; (San Juan, Puerto Rico) Part 2. *City* — New York, N.Y.; San Juan, P.R.

135. Feb. 25, 1960 (Date of release)— Issues Presented by Air Reserve Center Training Manual (executive session). *City* — Washington, D.C.

136. May 10, 1960 — Investigation of Communist Espionage in United States (Testimony of Frantisek Tisler). *City* — Washington, D.C.

137. May 12-14, June 10, 1960—Northern California District of the Communist Party (Structure-Objectives-Leadership) Parts 1-4. *City* — San Francisco, Calif.

138. May 26, 1960 — Testimony of Anthony Krchmarek and Charles Musil. *City* — Washington, D.C.

139. June 6-8, 23, 1960 — Communist Activities Among Seamen and On Waterfront Facilities—Part 1. *City* — Washington, D.C.

140. Aug. 23-24, 1960 — Communist Penetration of Radio Facilities (Conelrad-Communications)—Part 1. *City* — Washington, D.C.

141. Sept. 14, 1960 — Testimony of Capt. Nikolai Fedorovich Artamonov (Former Soviet Naval Officer). *City* — Washington, D.C.

142. May 31, June 7, Aug. 16, 1961 — Hearings re H.R. 4700 (re SACA). *City* — Washington, D.C.

143. Sept. 16, 1961 — Hearings re Revision of H.R. 9120, etc. *City* — Washington, D.C.

144. Nov. 20-22, 1961 — Structure and Organization of the Communist Party of the United States. Parts 1-2. *City* — Washington, D.C.

145. Feb. 7, 1962 — Hearings re H.R. 9753, etc. *City* — Washington, D.C.

146. March 15, 1962 — Hearings on H.R. 10175. *City* — Washington, D.C.

147. Apr. 24-27, 1962. 'United Front' Technique of the Southern California District of the Communist Party. *City* — Los Angeles, Calif.

148. Apr. 25-27, Oct. 4, 1962 — Communist Youth Activities, Helsinki Festival. *City* — Washington, D.C.

149. April 26-27, 1962 — Communist and Trotskyite Activity within the Greater Los Angeles Chapter of the Fair Play for Cuba Committee.
City — Washington, D.C.

150. May 9, 10, 17, July 11, 12, 1962 — Communist Outlets for Distribution of Soviet Propaganda in the United States. *City* — Washington, D.C.

151. May 22, 1962 — Investigation of Communist propaganda and the truth about conditions in Russia.
City — Washington, D.C.

152. May 24, 25, 1962 — "Intellectual freedom" — Red China Style (testimony of Chi-chou Huang).
City — Washington, D.C.

153. June 4-5, 1962 — Investigation of Communist Activities in Cleveland, Ohio. *City* — Cleveland, Ohio

154. Nov. 14-15, 1962 — Investigation of U.S. Communist Party Assistance to Foreign Communist Governments (Medical Aid to Cuba and Friends of British Guiana).
City — Washington, D.C.

155. Dec. 11-13, 1962 — Hearings re Communist Activities in the Peace Movement (Women Strike for Peace and Certain Other Groups). *City*—Washington, D.C.

156. Mar. 6, 1963 — U.S. Communist Party assistance to foreign Communist governments.
City — Washington, D.C.

157. May 6, 7, 23, July 1-2, Aug. 5, Sept. 12-13, Oct. 16, Nov. 18, 1963; Sept. 3-4, 1964 — Violations of State Department Travel regulations and pro-Castro propaganda activities in the United States.
City — Washington, D.C.; Los Angeles, Calif.

158. July 29, 1963 — U.S. Communist Assistance to Foreign Communist Parties (Veterans of the Lincoln Brigade). *City* — Washington, D.C.

159. Sept. 19, 1963 — Investigation of the defection of a Russian seaman. *City* — Washington, D.C.

160. Feb. 18-20, Apr. 7, 8, May 19, 20, 1964 — Hearings on H.R. 352. Parts 1-2. *City* — Washington, D.C.

161. Apr. 29-30, 1964 — Investigation of Communist Activities in Buffalo, N.Y. *City* — Buffalo, N.Y.

162. May 5, 1964 — Testimony of Rev. James H. Robinson. *City* — Washington, D.C.

163. June 24-26, 1964 — Hearings on Communist activities in Minneapolis, Minnesota area. *City* — Minneapolis, Minn.

164. July 12, 1964; April 27-28, 1966 — Communist Activities in the Central California Area. *City* — San Francisco, Calif.

165. Mar. 21, Apr. 1, 28, May 7, 14, 1965 — Hearings re H.R. 470, etc. *City* — Washington, D.C.

166. May 25-27, June 22, 1965 — Hearings re investigation of Communist Activities in Chicago, Illinois. *City* — Chicago, Ill.

167. June 11, 1965 — Testimony of Juanita Castro Ruz. *City*—Washington, D.C.

168. Oct. 19-22, 25-28, Nov. 1-4, 9, 1965 (Additional Dates) —Activities of the Ku Klux Klan Organizations in the United States. Parts 1-5. *City*—Washington, D.C.

169. Apr. 6, 1966 — Testimony of Wlayslaw Tykocinski. *City*—Washington, D.C.

170. July 20-22, 1966 — Hearings on H.R. 15678, etc.
City—Washington, D.C.

171. Aug. 16-19, 22-23, 1966 — Hearings on H.R. 12047 (Bill to make punishable assistance to enemies of the United States in the time of undeclared war).
City — Washington, D.C.

172. Aug. 10, 1967 — The New Communist Propaganda Line on Religion. *City* — Washington, D.C.

173. Aug. 15-18, 1967 — Hearing relating to H.R. 10390, H.R. 10391 and H.R. 10681, Amending the Internal Security Act of 1950. *City* — Washington, D.C.

174. Sept. 6, 1961 — Testimony by and concerning Paul Corbin. *City* — Washington, D.C.

175.* Apr. 6, 7, May 10, June 15, Nov. 15, 1967 — Conduct of Espionage within the United States by Agents of Foreign Communist Governments.
City—Washington, D.C.

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* Published after commencement of Zeisel study. See Appendix 5.

APPENDIX 5

A PROFILE OF THE HEARINGS BEFORE THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES

Preliminary Report

Hans Zeisel

Certain allegations have been made concerning the procedures used by the House Committee on Un-American Activities since its establishment in 1946 as a standing committee of the House of Representatives. I have been asked to undertake a study to test these allegations as they apply to hearings conducted by the Committee. The present study has been designed to answer in precise quantitative terms a series of questions of which the following are examples: "How often did the Committee ask questions about alleged misdeeds that occurred 5 years or more prior to the hearing?"; "How frequently did the Committee ask leading questions?"; "How many questions concerning alleged misdeeds were asked after the witness had refused to answer one, claiming constitutional immunity?"

SAMPLING

One way of answering such questions would have been to go through all the 174 hearings the House Committee has held since 1946, in which 3125 witnesses appeared, and count whatever required counting. Given the resources and the time available, this was an obviously impossible route to follow. However, statistical sampling techniques are now available that allow, within calculable error limits, sufficiently precise numerical projections to the whole from a properly selected sample.

The courts have increasingly recognized the indispensability of such sampling operations and have accorded them high credibility, provided the operation was expertly conducted. The literature on sampling statistics as legal evidence is growing and has achieved an important place both in the statistical and legal literature.[1]

THE SAMPLING PLAN

The present study is based on a sample of 100 witnesses, drawn from the total of 3125 witnesses who appeared before the House Committee between January 1946 and December 1967. The 174 hearings at which these witnesses appeared were numbered consecutively based on the dates of the printed hearing transcripts, and the witnesses in these hearings were then numbered consecutively as well. The detailed sampling plan and actual selection were designed in cooperation with Professor Paul Meier, former Chairman of the Department of Statistics, University of Chicago. The essence of this, as of any other, sampling

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[1]See: Samples and Polls, in Streamlining the Big Case, Section C, Report of the Special Committee of The Section of Antitrust Law, American Bar Association, Sept. 15, pp. 31-37 (1958); Zeisel, Statistics as Legal Evidence, article in International Encyclopedia of the Social Sciences, Vol. 15, pp. 246-250, Macmillan, (1968); idem, The Uniqueness of Survey Evidence, 45 Cornell L. Q. 322-346, 1960). Sampling operations are now extensively used by the United States Census itself. The Bureau of the Census discovered that for many of its questions it was unnecessary to interview the entire U.S. population, that it was in fact sometimes better to rely instead on a properly selected sample. Answers from such sampling operations, were often found to have a higher reliability than the corresponding census operations, because a census operation among 200 million people is necessarily unprecise at the fringes, and this error is sometimes greater than the sampling error in a carefully conducted sampling operation.

plan was to give every unit (every witness) in each stratum the same chance of becoming part of the sample. This is achieved with the help of so-called random numbers, the scientific counterpart of what is accomplished by a perfect lottery drawing.

In order to meet a request that greater emphasis be given to the examination of the more recent hearings of the House Committee, witnesses were divided into two strata: the 1993 witnesses in the 108 hearings that began before January 1, 1957, and the 1132 witnesses that appeared in the 66 hearings that began after January 1, 1957. Two-thirds of the sample, or 67 witnesses were selected from the later period, the remainder of 33 sample witnesses from the earlier period.

Hence the sampling ratio—the ratio of the sample to the universe from which it was drawn—is for the earlier period:*

33 out of 1993
or
1 in 60.4

for the later period:

67 out of 1132
or
1 in 16.9

Wherever in the following tables the two strata are combined, covering the whole period 1946-1967, account was, of course, taken of these different sampling ratios.

CONTENT ANALYSIS

Once the 100 sample witnesses were thus selected, their testimony and the questions asked of them by the Com-

*See Table 1.

mittee were subjected to a detailed type of analysis that is technically known as Content Analysis.[2]

In this analysis, every question asked by the Committee or by its counsel was considered a separate unit about which one had to ascertain certain points, such as: "Did the question concern an activity or event involving only the witness or did it also involve other persons?" Or: "If an organization was involved in the question, which organization was it?" Or: "Did the witness answer the question; if not, what was his response?" etc.

Thus, for every single question asked of each witness a separate code sheet was filled out that covered 12 different items. (See Attachment A.)

In addition, a Summary Sheet was completed for every witness. It recorded 29 items, such as whether the witness was heard in public or executive session; whether he was accompanied by counsel; whether he ever refused to answer a question, and so forth. (See Attachment B.)

All these forms were completed by an expert coder, under detailed instructions which I had drawn up. (See Attachment C.) All questionnaires that were subsequently tabulated were checked by me personally as to their accuracy.

THE COMPUTER

From then on, the coded information on the forms was transferred to IBM punch cards, the punching was verified, and the tables run on IBM Computers.

The operation described above, beginning with the drawing of the sample, through coding, punching, and tabulation on the computer, provided the information on which the following results of the study are based.

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[2] See article Content Analysis, International Encyclopedia of Social Science, Vol. 3, pp. 371-377, Macmillan (1968).

PRESENT TABULATIONS

At this stage of the study, tabulations have been completed for the major category of witnesses, namely those who indicated lack of cooperation by refusing to answer one or more questions put to them by the Committee.

These witnesses constitute 76 per cent of the sample, and hence it is our best estimate that this category of witnesses constitutes also 76 per cent of the total universe of 3125 witnesses. It is this category of witnesses that is being analyzed in detail.

TYPE OF QUESTIONS ANALYZED

Although we have information on every question asked of the 100 witnesses in the sample, we have omitted from most of the following tabulations those questions that deal only with procedure, identification (name, etc.), or other neutral matters. The present analysis concentrates on those questions that concern an alleged misdeed, committed either by the witness himself, or by another person allegedly known to the witness, or by an organization, or by any combination of the three.[3] It is this latter group of questions that are directly related to the test of allegations about the Committee.

THE KU KLUX KLAN HEARING

Of the 174 hearings held by the House Committee on Un-American Activities, 2 involved right wing groups. One of these, Hearing No. 1, had only one witness—Gerald L. K. Smith. He happened not to fall into the sample. The other such hearing (No. 168) involved the Ku Klux Klan. Of its total of 190 witnesses, 12 fell into the sample,

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[3]For the definition of "Misdeed Question" see Coding Instructions, Attachment C.

11 of whom were uncooperative witnesses. Since the hearings of these witnesses differed in some respects from the other hearings, we occasionally draw attention to the nature of these differences, by comparing the examination of the KKK witnesses with the witnesses in the other hearings.

THE CHICAGO 1965 HEARING

At several points, also, the Chicago 1965 hearing will be compared with the findings concerning *all* hearings. The Chicago hearing forms, of course, also part of the sample study that covers *all* hearings.[4] But for this special comparison we have collected and analyzed the testimony of *all* the witnesses heard in the Chicago hearing, hence we have technically taken a census of that hearing.

Some Findings

1. Three-quarters of the 3,125 witnesses who have appeared before the House Committee on Un-American Activities, that is, an estimated total of 2,375 witnesses, have been uncooperative in the sense that they refused to answer one or more questions put to them by the Committee. (Table 2)

2. These witnesses have been asked an estimated total of 158,100 questions. About one-third of these, or 50,500, were misdeed questions, that is, questions in which an action was alleged (committed by either the witness or by others) which in the eyes of the Committee was a misdeed. (Table 3) On the average, each witness was asked about 21 such misdeed questions. (Table 4)

3. The misdeeds alleged in these questions have been only to a small extent outright "criminal" actions (such

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[4]In fact, one witness of the Chicago hearing happened to fall into the 100 witness sample.

as espionage, sabotage or other criminal acts); only 6 per cent of all misdeed questions (in the Chicago hearing only 2 per cent) fall into that category (Table 5); for the most part these misdeed questions concerned political activities.

4. The misdeed questions referred for the most part to acts allegedly committed by the witness himself (82 per cent), but 41 per cent of the questions asked also about the misdeeds of specified other persons (with or without specific reference being made to various organizations). (Table 6)

5. As to the time of the action these misdeed questions referred to, 23 per cent of them referred to a time 5 or more years prior to the hearings at which the question was asked. For the questions in the Chicago hearing the corresponding proportion was 47 per cent, that is, approximately half of the questions concerned events 5 or more years before that hearing. (Table 7)

6. The number of leading questions was counted among all the misdeed questions asked by the Committee. The proportion of such questions was 11 per cent on the average for all hearings. (Table 8)

7. What was the response of these uncooperative witnesses to the misdeed questions asked of them? For all hearings taken together, 60 per cent of all questions met with the witness' formal refusal to answer. In another 5 per cent of the questions, the witness remained unresponsive without any formal refusal; in 6 per cent of the questions the witness answered with some procedural request for repeating the question, or for clarification: to 29 per cent of the questions, the Committee obtained a response.

These percentages were quite different for the KKK hearing; here the majority of questions were responded to even by those witnesses who at one point had formally refused to answer a question. At all hearings *other than* KKK, the per cent of response was 18%. (Table 9)

8. As to the grounds for the formal refusal to answer a question, Table 10 gives them for the first refusal by each witness—subsequent refusals usually refer back to these reasons or repeat them: 40 per cent of the witnesses cited the Fifth Amendment to the Constitution; 51 per cent cited the Fifth and the First Amendment; and a small group cited only the First Amendment, and other grounds. Taken together, 91 per cent of the witnesses cited the Fifth Amendment either alone or in conjunction with another ground. (Table 10)

9. The great bulk of the misdeed questions, 93 per cent of them, have been asked after the witnesses had made their first formal refusal to answer a question. (Table 11)

10. Each uncooperative witness was asked, on the average, one misdeed question before he registered his first refusal to answer a question. The remaining 20 questions —again on the average—were asked of him after his first refusal. (Table 12)

11. We now concentrate on the misdeed questions asked after the witness' first refusal. 62 per cent of the questions met with the witness' formal refusal to answer the question. To another 11 per cent of the questions, the witness failed to reply, by simply being unresponsive or by asking for clarification. Thus the Committee obtained a responsive answer to 27 per cent of the misdeed questions asked after the first refusal. (Table 13)

This 27 per cent average for all hearings, however, is not the figure found in all individual hearings. In the

KKK hearing 72 per cent of the misdeed questions asked after the 1st refusal received a responsive answer, and the average for all other hearings is only 16 per cent. (Table 13)

12. Looked at not in terms of averages, but in terms of the actual, witness by witness response, the figures reveal that these averages are composed of widely different individual responses. Some witnesses answer no further question, once they refused to answer one, others answer very many of them. What are the relative frequencies with which the witnesses answer questions after their first refusal? Tables 14 and 15 give these answers:

i) The left end of the bottom line of Table 14 indicates that 59.6 per cent of all these witnesses answered none of the questions asked of them by the Committee.

ii) Moving now to the right top end of Table 14 we note that 0.7, not quite 1 per cent, of all witnesses accounted for 40.5 per cent of all answers; and 1.4 per cent of all witnesses accounted for 50.4, that is for one-half of all answers.

iii) These 1.4 per cent of all uncooperative witnesses are special also in another way: they were witnesses from the Ku Klux Klan hearings; they are the ones who account for the relatively high response in that hearing. (See Table 13)

iv) Table 15, which is a condensation of Table 14, indicates that 12% of the witnesses account for 88% of all answers to misdeed questions (after their first refusal).

13. Going one step further in analyzing the response of these witnesses, we tried to determine the answer to the

following question: In what percentage of the cases in which the witnesses *did* give an answer that was formally responsive to a misdeed question, was this answer also substantively responsive, in the sense that the Committee actually obtained some information.

In other words, we analyze here the nature of the response to the 27 per cent of all questions to which the Committee received a "response." (Table 13) The pattern is roughly as follows: in one half of all cases (52%), the witness confirmed the allegation; in one quarter of the cases (22%) he denied it; and in another quarter (26%) of the cases he did not respond to the substance (last column in Table 16).

14. When the affirmative answers (Table 16) are further analyzed as to the time period in which the affirmed misdeed had taken place, 16 per cent of these answers in all hearings pertained to misdeeds that occurred 5 years or more prior to the hearing. Again the pattern is different for the KKK hearing, where the proportion is but 2 per cent, and for the rest of the hearings, where it is 46 per cent (Table 17).

Table 1

Sampling Plan

	Before Jan. 1, 1957	After Jan. 1, 1957	Total
Number of Hearings	108	66	174
Number of Witnesses	1,993	1,132	3,125
Sample Size	33	67	100
Sampling Ratio	1 in 60.4 witnesses	1 in 16.9 witnesses	

Table 2

Number of Uncooperative Witnesses

A. SAMPLE

	Before Jan. 1, 1957	After Jan. 1, 1957	Total Sample
All Witnesses	33	67	100
Uncooperative Witnesses	25	51	76
Per Cent Uncooperative of All Witnesses	76%	76%	76%

B. PROJECTION TO HEARINGS

	Before Jan. 1, 1957	After Jan. 1, 1957	All Hearings
(a) Number of All Witnesses (Count)	1,993	1,132	3,125
(b) Per Cent Uncooperative (Sample)	76%	76%	76%
(a x b) Number of All Uncooperative Witnesses	1,515	860	2,375

Table 3

Number of All Questions and Number of Misdeed Questions Asked by the Committee—

All Hearings 1946-67

i) All Questions

1847 questions in sample before 1957	X	60.4*	= 111,559
2754 questions in sample after 1957	X	16.9*	— 46,544
Total (rounded off)			158,100

ii) Misdeed Questions

500 questions in sample before 1957	X	60.4*	= 30,200
1202 questions in sample after 1957	X	16.9*	= 20,314
Total (rounded off)			50,500

*See bottom line of Table 1.

Table 4

Number of Questions asked of the Uncooperative Witnesses

	All Questions		Misdeed Questions	
	All Hearings 1946-67	Chicago 1965	All Hearings 1946-67	Chicago 1965
Total Number of Questions	158,100*	719	50,500*	333
Average Number of Questions Per Witness:				
Mean**	67	65	21	30

*From Table 3.

**These means were obtained by dividing the total number of questions by the number of uncooperative witnesses who appeared, i.e.:

	All Hearings 1946-67	Chicago 1965
Number of Uncooperative Witnesses	2,375	11

The number 2,375 constitutes the uncooperative 76 per cent of the 3,125 witnesses who appeared before the Committee. For the Chicago hearing, the number 11 includes all uncooperative witnesses except the 3 who left the hearing before their questioning could begin. The number 3,125 is the actual count of the witnesses, listed as appearing before the Committee between 1946 and 1967. The figure of 76 per cent is based on the count in the sample of 100 witnesses. (See Table 2.)

Table 5

Type of Action Involved in the Misdeeds Alleged in the Committee's Question

	All Hearings 1946-67	Chicago 1965
	%	%
Clearly Criminal Acts	6	2
Political Activities (membership, attending meetings, etc.)	77	91
Knowing Alleged Subversives, Holding Suspect Views, etc.	12	8
Other Not Clearly Criminal Actions	7	3
Total (Base)	100%*	100%
Number of Questions in Sample	(1,702)	(333)

*The percentages add up to more than 100% since more than one category of non-criminal action may be involved in alleged misdeed.

Table 6

Persons Involved in Alleged Misdeed

	All Hearings 1946-67		Chicago 1965	
	%		%	
Witness but not Other Persons	53	Witness 82%	67	Witness 96%
Witness with Others	29	Others 41%	29	Others 31%
Others but not Witness	12		2	
Organization Only	6		2	
Total	100%		100%	
Number of Questions in Sample	(1,702)		(333)*	

* Full count — not sample.

Table 7

Proportion of Misdeed Questions Referring to Events that Occurred 5 Years or More Before the Hearing

	Questions in All Hearings 1946-67		Questions in Chicago 1965	
	Per Cent in Sample	Projected to Total Number	Per Cent	Number
Less than 5 years*	77	(38,900)	53	(176)
5 years or more	23	(11,600)	47	(157)
Total	100%	(50,500)**	100%	(333)**

* Includes unspecified time.

** See Table 4.

Table 8

Per Cent of Misdeed Questions That Were Leading Questions

	All Hearings 1946-67	Chicago 1965
	11%	12%
Number of Questions in Sample (=100%)	(1702)	(333)

Table 9

Response to the Misdeed Questions

	All Hearings Except KKK	KKK Hearings	All Hearings 1946-67	Chicago 1965
	%	%	%	%
Responsive	18	74	29	—
Formal Refusal	70	23	60	86
Unresponsive Without Formal Refusal	6	1	5	—
Request for Repeat, Clarification, etc.	6	2	6	14
Total	100%	100%	100%	100%
Number of Questions in Sample	(1081)	(621)	(1702)	(333)*

*Full Count

Table 10

Grounds Stated for First Refusal To Answer

	All Hearings 1946-67		Chicago 1965
	%		%
Fifth Amendment Only	40	Total 5th 91%	0
Fifth and First Amendment	51		91
First Amendment Only	2	Total 1st 53%	9
Other Grounds Not Including Fifth or First Amendment	6		0
	100%		100%
Number of Uncooperative Witnesses	(75)*		(11)

* One witness, who was released from her subpoena and not questioned, is excluded.

Table 11

Per Cent and Number of Misdeed Questions Asked Prior To, At and After the First Refusal

	All Hearings 1946-67		Chicago 1965
	% in Sample	Projection	Number
Before 1st Refusal	5	(2,500)	(——)
At 1st Refusal*	2	(1,100)	(1)
After 1st Refusal	93	(46,900)	(332)
Total	100%	(50,500)	(333)
Number of Questions in Sample	(1702)		

*Many witnesses made their first refusal not in reply to a misdeed question, but to another question such as "What is your address?"

Table 12*

Average Number of Misdeed Questions Asked of the Witnesses Before and After the First Refusal

	Number of Questions
Before 1st Refusal	1*
After 1st Refusal	20**
Total	21

*2,500 questions (Table 11), divided by 2,375 witnesses (Table 2) equals 1.1 questions.

**46,900 questions (Table 11), divided by 2,375 witnesses (Table 2) equals 20 questions.

Table 13

Response to the Misdeed Questions Asked After the First Refusal

	All Hearings Except KKK	KKK Hearings	All Hearings 1946-67	Chicago 1965
Responsive	16	72	27	—
Formal Refusal	71	25	62	86
Unresponsive Without Formal Refusal	6	1	5	—
Request for Repeat, Clarification, etc.	7	2	6	14
Total	100%	100%	100%	100%
Number of Questions in Sample	(1014)	(557)	(1571)	(332)*

*Full count

Table 14

Per Cent of Uncooperative Witnesses Who Give the Indicated Number of Answers to Misdeed Questions Questions Asked Them After Their 1st Refusal

Number of Questions Answered	(a) Per Cent by: of All Witnesses	(b) Per Cent of All Answers	(a) Per Cent of All Witnesses	Cumulative* provide:	(b) Per Cent of All Answers
310	.7	40.5	.7	.....	40.5
76	.7	9.9	1.4	.....	50.4
37	2.6	17.4	4.0	.....	67.8
29	.7	3.8	4.7	.....	71.6
24	.7	3.1	5.4	.....	74.7
17	.7	2.2	6.1	.....	76.9
14	.7	1.8	6.8	.....	78.7
13	2.6	6.1	9.4	.....	84.8
6	3.3	3.6	12.7	.....	88.4
5	5.9	5.4	18.6	.....	93.8
4	1.4	1.0	20.0	.....	94.8
3	.7	.4	20.7	.....	95.7
2	6.6	2.4	27.3	.....	97.6
1	13.2	2.4	40.4	.....	100.0
none	59.6	0.0	100.0	.....	100.0
Total	100.0%	100.0%			

* Each consecutive figure is added to the sum of the preceding ones.

Table 15

Proportion of Uncooperative Witnesses Who Answered the Indicated Number of Misdeed Questions After Their 1st Refusal*

Number of Answers	Per Cent of Witnesses } provide	Per Cent of All Answers
	%	
None	60	0
1-5	28	12
More than 5	12	88
	100%	100%
Number of Witnesses in Sample	(75)**	

*This Table is a condensation of Table 14.

**One witness, who was released from her subpoena and not questioned, has been excluded from this table so as to not spuriously increase the number of witnesses answering "none".

Table 16

Detailed Analysis of the "Responsive" Answers Given After the First Refusal

	All Hearings Except KKK	KKK Hearing	All Hearings 1946-67
	%	%	%
ffirmed Allegation	35	69	52
enied Allegation	34	11	22
laimed Having No Pertinent Knowledge	12	15	14
laimed Not to Remember	19	5	12
otal Questions Answered (See Table 13)	100%	100%	100%
umber of Answers in Sample	(400)	(174)	(574)

Table 17

Time Period Referred to in Questions to which Affirmative Answers were Given

(After 1st Refusal)

	All Hearings Except KKK	KKK Hearings	All Hearings 1946-67
	%	%	%
5 Years or Older	46	2	16
Less Than 5 Years	54	98	84
	(100%)	(100%)	(100%)
Number of Affirmative Answers in Sample	(127)	(275)	(402)

ATTACHMENT A

INDIVIDUAL QUESTION SHEET

Cols.

(1-3) Item #1. ___ ___ ___ WITNESS NUMBER

(4-6) Item #2. ___ ___ ___ QUESTION NUMBER

Item #3. IF THIS IS A REPEAT QUESTION, ENTER NUMBER OF QUESTION IT REPEATS

(7-9) ___ ___ ___, AND SKIP TO ITEM #10.

Item #4. QUESTION CONCERNS: (circle each category for "Yes" or "No")

	Yes	No	
(10)	1	2	Identification, procedural
(11)	5	6	Alleged misdeeds
(12)	1	2	All other questions

(Unless an alleged misdeed, skip to Item #10)

Items #5-9 APPLY ONLY TO "ALLEGED MISDEEDS"

Item #5. DOES THE QUESTION CONTAIN AN ACCUSATION: (circle one)

	Yes	No
(13)	5	6

Item #6. WHO WAS INVOLVED IN THE ALLEGED MISDEED: (code each category)

	Yes	No	
(14)	1	2	Witness
(15)	5	6	Other person(s)
(16)	1	2	Organization(s)

Item #7. ORGANIZATION OR INSTITUTION INVOLVED: (code each category)

	Yes	No	
(17)	5	6	Communist Party
(18)	1	2	"Communist conspiracy," "cause," etc.
(19)	5	6	Foreign power
(20)	7	8	KKK, American Fascist Party, etc.
(21)	1	2	Other _____ (specify)
(22)	5	6	None involved

Item #8. ACTION INVOLVED IN ALLEGED MISDEED: (code each category)

	Yes	No	
(23)	1	2	Clearly criminal acts, such as espionage, sabotage, fraud, arson, kidnapping
(24)	5	6	Political activity, such as membership, attendance, signing, sponsoring, teaching
(25)	1	2	Knowing or associating with allegedly subversive individuals
(26)	5	6	Holding views deemed favorable to Communist cause
(27)	7	8	Holding views deemed favorable to aims of KKK, etc.
(28)	1	2	Other _____ (specify)

Cols.

Item #9. TIME OF ALLEGED MISDEED: (circle one)

(29)
1 ... Five or more years before hearing
2 ... More recent, including at time of hearing
3 ... Could refer to both
4 ... Time not specified

Items #10-12 APPLY TO ALL TYPES OF QUESTIONS, including Repeats.

Item #10. HOW DID WITNESS RESPOND TO THE QUESTION: (circle one)

(30)
1 ... Was responsive
2 ... Unresponsive statement or answer
3 ... Expressly refused
4 ... Requested repeat or clarification
5 ... Interruption, completed response not made
6 ... Other _____ (specify)

Item #11. IF WITNESS "EXPRESSLY REFUSED," WHAT REASONS DID HE GIVE: (code all categories)

	Yes	No	
(31)	5	6	5th Amendment (explicit or "self-incrimination")
(32)	1	2	1st Amendment (explicit or "freedom of speech, etc.")
(33)	5	6	Irrelevant to purposes of hearing
(34)	1	2	Referred to prior refusal
(35)	5	6	Other _____ (specify)
(36)	1	2	Gave no reasons
(37)	5	6	Not applicable (no express refusal)

Item #12. CHECK HERE IF THIS IS THE FIRST TIME WITNESS EXPRESSLY REFUSED TO ANSWER A QUESTION.

(38) 1 ... ☐

(If you check here, then transfer to WITNESS SUMMARY SHEET from ITEMS #2 and 11 of this INDIVIDUAL QUESTION)

CODER: _____

DATE: _____

ATTACHMENT B

Witness Name: _____

WITNESS SUMMARY SHEET

Cols.

(1-3) Item #1. ___ ___ ___ WITNESS NUMBER

Item #2. Hearing Date and Place:

_____

Item #3. PUBLIC SESSION: (circle one)

(4)
1 ... Yes
2 ... No
3 ... Both Public & Executive (List Question Nos. during public portion)

_____

Item #4. WAS COUNSEL FOR WITNESS PRESENT:

(5)
4 ... Yes
5 ... No
6 ... Part of the time (List Question Nos. during Counsel's presence)

_____

Item #5. ADJOURNMENT FOR OBTAINING COUNSEL:

(6)
7 ... Committee adjourned
8 ... Committee refused adjournment _____ (Page ref.)
9 ... Not applicable

Item #6. WITNESS RESPONSE: (✓ one only)

Answered all questions:

(7)
1 ... Friendly to Committee
2 ... Not friendly
3 ... Not clear whether friendly
4 ... Refused to answer one or more questions

Item #7. IF EXPRESSLY REFUSED ANY QUESTIONS:

(8-10) ___ ___ ___ Number of first question so refused (TRANSFER FROM ITEMS #12 and 2, INDIVIDUAL QUESTION SHEET)

If no express refusals, enter "0 0 0" for this Item.

Item #8. GROUNDS, if any, FOR FIRST REFUSAL: (TRANSFER FROM ITEMS #12 and #11, INDIVIDUAL QUESTION SHEET) (Code each category)

	Yes	No	
(11)	1	2	5th Amendment, "self incrimination"
(12)	3	4	1st Amendment, "free speech"
(13)	5	6	Irrelevant to purposes of hearing
(14)	7	8	Other _____ (specify)
(15)	9	0	Not applicable (no express refusal or no grounds given)

Cols.

Item #9. WAS WITNESS EVER HEARD IN PRIOR HUAC SESSION: (circle one)

(16)
1 ... Yes, public
2 ... Yes, private
3 ... Yes, both
4 ... Yes, uncertain of type
5 ... No, never heard before
6 ... No reference

Item #10. HAS WITNESS APPEARED BEFORE OTHER TRIBUNALS:

(17)
1 ... Yes _____ (specify tribunal[s] and page ref.)
2 ... No
3 ... No reference

Item #11. DID WITNESS OR COUNSEL, PRIOR TO OR DURING HEARING, REQUEST EXECUTIVE SESSION:

(18)
4 ... Yes _____ (page ref. where first noted)
5 ... No reference to request

Item #12. WAS WITNESS EXPLICITLY ENCOURAGED or GRANTED PERMISSION TO USE "SHORT FORM" REFUSAL:

(19)
6 ... Yes _____ (page ref.)
7 ... No, or not applicable

DID WITNESS COMPLAIN OF: (Items #13 - 18)

Item #13. Release of name to press prior to hearing:

(20)
8 ... Yes _____ (page ref.)
9 ... No

Item #14. Difficulty of obtaining counsel:

(21)
1 ... Yes _____ (reasons given, and page ref.)
2 ... No

Item #15. Threats of or actual personal harm:

(22)
3 ... Yes _____ (page ref.)
4 ... No

Item #16. Threats of or actual job loss:

(23)
5 ... Yes _____ (page ref.)
6 ... No

Item #17. Other threats or harm:

(24)
7 ... Yes _____ (specify & page ref.)
8 ... No

Item #18. Presence of news media at hearing

(25)
9 ... Yes _____ (page ref.)
0 ... No

(OVER)

Cols.

Item #19. DID COMMITTEE REMOVE OR RESTRAIN NEWS MEDIA:

(26) 1 ... Yes
2 ... No

Item #20. DID COMMITTEE REFLECT NEGATIVELY ON WITNESS' CHARACTER:

(27) 8 ... Yes _____ (page ref.)
9 ... No

Item #21. DID COMMITTEE THREATEN CONTEMPT ACTION AGAINST WITNESS:

(28) 3 ... Yes _____ (page ref.)
4 ... No

Item #22. DID COMMITTEE THREATEN OTHER LEGAL SANCTIONS AGAINST WITNESS:

(29) 5 ... Yes _____
(specify & page ref.)
6 ... No

Item #23. WAS COUNSEL PERMITTED TO STATE GENERAL OBJECTIONS TO HEARING:

(30) 7 ... Yes _____ (page ref. for 1st occurrence)
8 ... No _____ (page ref. for 1st occurrence)
9 ... Never tried
0 ... Counsel not present

Item #24. WAS COUNSEL PERMITTED TO STATE OBJECTIONS TO ANY QUESTIONS:

(31) 1 ... Yes _____ (page ref., 1st)
2 ... No _____ (page ref., 1st)
3 ... Never tried
4 ... Counsel not present

Item #25. WAS COUNSEL PERMITTED TO CROSS-EXAMINE:

(32) 5 ... Yes _____ (page ref., 1st time)
6 ... No _____ (page ref., 1st time)
7 ... Never tried
8 ... Counsel not present

Item #26. WAS COUNSEL PERMITTED TO MAKE OTHER OBJECTIONS TO PROCEDURE:

(33) 9 ... Yes _____ (page ref., 1st time)
0 ... No _____ (page ref., 1st time)
1 ... Never tried
2 ... Counsel not present

Cols.

Item #27. OTHER RESTRAINTS ON COUNSEL: (code each category)

	Yes	No	
(34)	3	4	Told to leave _____ (page ref.)
(35)	5	6	Physically removed _____ (page ref.)
(36)	7	8	Other physical restraints _____ (page ref.)
(37)	9	0	Disbarment threat _____ (page ref.)
(38)	1	2	Other threats or warnings _____ (specify and page ref.)
(39)	3	4	No restraints & not applicable

Item #28. DID COMMITTEE EVER CAST ASPERSIONS ON COUNSEL's CHARACTER:

(40) 5 ... Yes _____ (page ref.)
6 ... No or not applicable

Item #29. WHAT REFERENCES WERE MADE, IF ANY, TO LEGISLATIVE PURPOSE OF THIS HEARING:

(41) 7 ... General reference to overall legislative purpose _____ (page ref.)
8 ... Specific reference to pending or contemplated legislation _____ (page ref.)
9 ... Both general and specific references _____ (page ref.)
0 ... None

CODER: _____

DATE: _____

ATTACHMENT C

Coding Instructions (Excerpt)

If The Question Is A Repeat:

a) Enter the number of the question it repeats, in Item #3.

b) Skip to Item #10.

Thus, we analyze (code) the nature of a question only the *first* time it is asked, but we analyze the *response* to a question *each* time it is asked. (See Items #10-12, re: responses.)

Item #4: Type of question:

Identification questions are those dealing with such information about the witness as his name, age, address,, employment.

Procedural questions involve such things as asking the witness if he will be seated, whether counsel is present, etc.

Alleged misdeed questions may concern:

1. Clearly criminal conduct, such as espionage, sabotage, fraud, arson, kidnapping, etc.

2. Any actions, beliefs, circumstances or associations which involve Communist governments, organizations or persons, or organizations or persons *clearly deemed* by the Committee to be related either directly or indirectly to Communist governments, organizations or persons. It may also encompass similar relationships to such organizations as the Ku Klux Klan.

This classification as an alleged misdeed may appear from the question itself, or may be drawn from the context of the entire testimony. For example, such designation could come through Committee references to allegations made by friendly witnesses.

Example:

Chrmn: "Mr. Smith has said that the Jefferson School is a Communist front. Is it true that you are the Director of that School?"

But if there is the slightest doubt that the question concerns an alleged misdeed, *do not code it as such.* For example, do not assume that the mere mention of an organization signifies a 'misdeed' is involved, unless the context makes it quite clear.

If it is not entirely clear that the question refers to an alleged misdeed, do not code it as a misdeed, but rather code it under "All other questions".

Do not consider the following as questions concerning 'misdeeds':

Questions about witness' refusal to answer: e.g. "Are you refusing to answer?" "Do you think it would incriminate you to answer?"

Questions concerning knowledge of others *where no misdeed is clearly alleged.* "Do you know Joe Smith?" If the Committee has not indicated that such knowledge or association constitutes a 'misdeed', this is to be coded under "All other questions". However, if later

sections of the transcript describe this knowledge or association as clearly constituting a 'misdeed', then this question will have to be recoded by you, and noted on the Referral sheet for Dr. Zeisel.

If You Have Coded Item #4 As Procedural", "Identification", or "All Other", Skip To Item #10.

Items #5 through 9 apply only to questions concerning alleged misdeeds.

Item #5: Does the question contain an accusation:

Example:

"Isn't it true that you have been a member of the Communist Party for 10 years?" This question contains an accusation, but: "Have you been a member of the Communist Party?", although it qualifies as a question concerning a misdeed, is not a question containing an accusation, and should be coded as "No", in Item #5.

Item #6: Who is involved in alleged misdeed:

Examples:

"Are you a member of the CP?" Code as "Yes" for "Witness" and "Organization", but code "No" for "Other Person(s)".

"Is Joe Simmons a member of the CP?" should be coded a "Yes:" for both "Other Person(s)" and "Organizations", but "No" for "Witness".

"Are you and Joe Simmons members of the same CP cell?" is coded "Yes" in all three categories.

Note:

When evaluating questions asked of friendly witnesses who were acting as undercover agents, membership or activities in the organization under surveillance are not to be considered "misdeeds" *of the witness,* though they may concern alleged misdeeds of an organization and/or of other persons.

Item #7: Organization or institution involved in alleged misdeed:

The question may name the organization or institution involved. If not, code under "None involved", and code "No" for the other categories of this Item.

If the question names the "Communist Party", "Communist conspiracy", "cause", or "Foreign power", code "Yes" in the appropriate category and "No" in those not named. If the KKK or American Fascist party is involved, code "Yes" in that category.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,

Plaintiffs-Appellants,

and

MILTON M. COHEN,

Intervening Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

NO.

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,

Plaintiffs-Appellants,

and

MILTON M. COHEN

Intervening Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

Appellant Milton M. Cohen, intervening plaintiff below, appeals from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered June 26, 1968.

Appellants Jeremiah Stamler and Yolanda F. Hall have submitted a Jurisdictional Statement and the record in this matter, and to avoid repetition and prolixity appellant Milton M. Cohen herewith adopts the Jurisdictional Statement and the record submitted by appellants Jeremiah Stamler and Yolanda F. Hall, as though set out fully herein. Appellant Milton M. Cohen submits this statement to supplement the Jurisdictional Statement of appellants Stamler and Hall, in showing that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the District Court of the Northern District of Illinois, Eastern Division is not yet reported. Copies of the opinion of the District Court, and the dissent therefrom, are attached to the Jurisdictional Statement of Stamler and Hall as Appendix 1, and a copy of the judgment from which this appeal is taken is attached to said Jurisdictional Statement as Appendix 2.

JURISDICTION

Appellant incorporates by reference herein the statement of jurisdiction set forth in the Jurisdictional Statement of appellants Stamler and Hall. Appellant, with the consent of all parties and with leave of Court intervened in cause 65 C 800 on May 24, 1965, the date said cause was filed, and appellant intervened in cause 65 C 2050 with leave of Court, on December 16, 1965.

Appellant filed his notice of appeal on July 5, 1968. The Judgment of said court dismissing the cases below was entered on June 26, 1968.

QUESTIONS PRESENTED

1. Whether the Speech or Debate clause of the United States Constitution bars actions against members of Congress for declaratory and injunctive relief designed to test constitutionality of Congressional action, or whether the speech or Debate clause is limited to protection against actions that would impose either criminal or civil liability?

2. Whether summary judgment was proper against all defendants in view of the fact that two of the defendants, the Attorney General and the U. S. Attorney, do not come within the terms of the Speech or Debate Clause, and in view of the fact that the relief prayed against them, if granted, would have substantially protected intervening plaintiff's constitutional rights?

3. Whether the Congressional defendants can claim the privilege against suit set forth in the Speech or Debate Clause of the United States Constitution more than three years after appearing in these cases, and after moving to dismiss on other grounds, after defending an appeal to the Court of Appeals for the Seventh Circuit, which Court reversed and remanded these causes to be heard by a three-judge court, after moving to dismiss before the three judge court, on other grounds, and after raising nine affirmative defenses in their answer to the complaints, none of which referred or related to the Speech or Debate clause?

4. Whether in any event summary judgment was proper in view of the contested issues of fact as to the constitutional legitimacy of the Committee's activities?

a. Is there a genuine issue of material fact as to whether the continued course of conduct of the Committee on Un-American activities of the United States House of Representatives has rendered the Act of Congress which established said Committee a bill of attainder in violation of

the provisions of Article I, Section 9, Clause 3 of the United States Constitution?

b. Whether the Act of Congress which established the Committee is so vague and indefinite that it is on its face unconstitutional?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 6, Clause 1 of the United States Constitution, set forth below at page 11.

Rule XI, 18(b), Legislative Reorganization Act of 1946, 60 Stat. 817, 828, the full text of which is set forth in pages 3-4 of the Stamler-Hall Jurisdictional Statement.

STATEMENT OF THE PROCEEDINGS BELOW

To avoid repetition appellant adopts the full statement of facts submitted in appellants' Stamler and Hall's jurisdictional statement; we add statements of those facts which bear directly on this appellant. "Ex. 50, p. ....." refers to the printed Supplemental Appendix filed in the Court of Appeals for the Seventh Circuit in Nos. 15628-9 and 15668-9 (Consolidated); "..... R. ..... p. ....." refers to the volume item and page number of the five volume Record on Appeal filed in this Court by appellants Stamler and Hall.

In his intervening petition appellant alleged that he had been served with a subpoena issued by the Un-American Activities Committee of the House of Representatives which commanded him to appear before the Committee at hearings to be held on May 25, 1965 in Chicago, Illinois. A copy of the subpoena served on appellant is annexed to the intervening petition as Exhibit 1. (1 R. 2, p. 55)

In his intervening petition, appellant identified himself as the executive director of a home for the aged operated by a charitable organization. Appellant holds a Master of Social Studies degree. (1 R. 2, p. 55)

Appellant adopted the substantive allegations of the complaint and prayed that the relief requested in the complaint be granted to him and for his benefit. (1 R. 2, p. 53)

Prior to the scheduled hearings of the Committee for which appellant had been subpoenaed newspaper accounts appeared in the daily and community newspapers in Chicago, Illinois, and in newspapers throughout the United States, identifying appellant as a person who had been named as a Communist to the Committee and who had been subpoenaed to testify before the Committee in a hearing concerned with the investigation of Communist activity in Chicago, Illinois. (2 R. 4, p. 142)

The subpoena served upon appellant did not specify the purpose of the May 25, 1965 hearings nor the subject matter or field of inquiry to be covered by the interrogation of appellant.

Appellant joined in plaintiffs' motion for a temporary restraining order enjoining defendants from convening or proceeding with the hearings for which intervenor had been subpoenaed, from taking any action to require intervenor to comply with or enforce the subpoena served on intervenor, and from seeking or receiving in any hearings evidence concerning intervenor. Appellant also joined in the motions of plaintiffs for the entry of an order requiring defendants to respond to the complaint and fixing the date for convening a three judge court.

The District Court denied the application for a temporary restraining order, refused to convene a three judge court, and dismissed the complaint and the intervening petition.

Appellant attended the hearings of the Committee held at 1212 North Lake Shore Drive, Chicago, Illinois, on May 25, 1965. Prior to the commencement of the hearings counsel for appellant delivered a written request to the defendant Honorable Edwin E. Willis stating that due to a prior trial commitment counsel was unable to be present on that day, and requested that Mr. Cohen's appearance before the Committee be re-set to May 26, 1965 at 2:00 P.M. The Committee announced at the commencement of the hearings on May 25, 1965, that the request had been received, and that appellant would be required to "be personally here and respond to the subpoena." (Ex. 50, p. 340) Appellant was present in the hearing room during all of the hearing conducted on May 25, 1965, without benefit of counsel. (2 R. 4, p. 144)

At the opening of the hearings on May 25, 1965, the subcommittee chairman read a statement purporting to be the purpose of the hearings. This was the first time appellant was made aware of the purpose of the hearings, or of the sub-committee's purpose in subpoenaing him. (2 R. 4, p. 154) The "purpose" as contained in the Committee chairman's statement was vague, and was not limited as to the period of time during which the activities of the witnesses were to be investigated.

At the opening of the hearing appellant requested that the testimony of appellant be taken in Executive Session. This request was denied, as were several other similar requests made on behalf of appellant. (Ex. 50, pp. 338, 341; 2 R. 4, p. 144)

During the hearings appellant was named in numerous questions propounded to witnesses who did not answer any of those questions. (2 R. 4, pp. 147-8, 150-2)

An examination of the record of the hearings themselves reveals that the Committee exploited the use of 5th amend-

ment claims of privilege by other witnesses in order to defame and degrade the appellant. The magic device was the framing of charges in questions put to witnesses known to the Committee to be certain to claim the fifth amendment. The result is that Committee's counsel became for all practical purposes the maker of the charges. To select a typical example from many, the following colloquy occurred during the hearings in a question put to a witness other than the appellant Milton Cohen.

> "Mr. Nittle: Did you and Milton Cohen join this group (North Hyde Park Area Independent Voters of Illinois to work for positions of leadership in conformity with Communistic Party directives or policy."
>
> "A. I avail myself of my previous answers." (Ex. 50, p. 446)

Appellant moved that his testimony be taken in Executive Session pursuant to Rule 26 (m) of the Committee's Rules, that his counsel be afforded the opportunity to cross-examine the Committee's witnesses, and to view the documentary evidence before the Committee, in the event that testimony or the documents implicated appellant. All appellant's motions and requests were denied. Appellant joined in the statements and requests set forth in ¶15(10) of the Complaint in No. 2050, to the effect that since the Committee had already heard in Executinve Session the testimony of the two witnesses on which the Committee relied in subpoenaing intervenor and plaintiff, no legitimate legislative purpose could be served by repeating the testimony in public, and that the only purpose of the hearings was to embarrass, ridicule and expose the witnesses subpoenaed by the Committee. (2 R. 4, pp. 146-7)

The Committee called appellant as a witness on the afternoon of May 26, 1965. Appellant gave his name and address and his counsel identified himself to the Committee. Appellant's counsel thereupon made the following statement to the Committee.

> "This Committee subpoenaed Mr. Cohen to appear before it approximately two weeks ago. A few days after Mr. Cohen received the subpoena, every daily newspaper in Chicago published the fact that he had been subpoenaed. There has been an obvious violation of Rule XVI of this Committee.
>
> "I advise this Committee that Mr. Cohen has intervened in the legal action pending in the U. S. District Court for the Northern District of Illinois entitled *Stamler et al.* v. *Willis, et al.*, 65 C. 800 challenging the right of the Committee to hold this hearing; challenging the validity of the subpoena served upon Mr. Cohen, and asserting by the release of Mr. Cohen's name to the newspapers as a subpoenaed witness the rules of this Committee had been violated and he will be denied his constitutional rights in the event he is required to testify. We hereby stand upon all of the allegations and reasons stated in the *Stamler* complaint, and in the intervening petition presented on Mr. Cohen's behalf. We present a copy of these documents to the Committee at this time (handing complaint and intervening petition to the Committee). In addition, we reiterate Mr. Cohen's request for a hearing in executive session.
>
> "For the foregoing reasons, and until the legal matters we have raised have been adjudicated, I have instructed my client not to answer any questions other than to give his name and address, which he has done. In view of the fact that my client will not answer questions, in view of the fact that we have legal action pending to test the validity of the subpoena, Mr. Chairman, we are going to leave the hearing room and we are not going to participate any further in these proceedings." (Ex. 50, p. 439; 2 R. 4, pp. 148-9)

Mr. Cohen then left the hearing room.

The Questions Presented Are Substantial

Summary of the Opinions Below

The Court below split 2 to 1 in its decision. Judges Hoffman and Napoli voted to dismiss appellants' actions with Judge Cummings dissenting.

Judge Hoffman wrote for the majority. The *sole* basis for the decision as to the Congressional defendants was reliance on Article 1, Section 6 of the United States Constitution, the so-called "Speech or Debate Clause." While acknowledging that there was no Supreme Court precedent which controlled the question at hand, Judge Hoffman nevertheless read the words, "shall not be questioned in any other place," to mean that the members of Congress were thereby immunized from being questioned in a court pursuant to a suit for *injunctive* relief designed to test the constitutionality of their action. He argued that the form of action, whether criminal prosecution, civil suit for damages or suit for injunction, did not affect the scope of the constitutional immunity.

Noting that the case presented a possible conflict between the First Amendment claims of the congressmen on the one hand and the First amendment claims of appellants on the other, Judge Hoffman went on to say: "We find that freedom of expression protected by the Speech or Debate Clause outweighs the similar protection of the First Amendment . . . If that speech impinges upon another's First Amendment rights, the former must prevail." Having disposed of the congressional defendants on the basis of Speech or Debate Clause, the Court below proceeded to dismiss the action against the other defendants, the Attorney General and the United States Attorney, on the grounds that it was "ancillary."

In his dissent, Judge Cummings stressed five points. First, that the congressional defendants by not raising the

issue of privilege or immunity in their answer which urged some nine other affirmative defenses had thereby waived it in this case. Second, that there was no authority for the majority's conclusion; "this review of the leading authorities on the Speech or Debate Clause shows," he said, "that until today no court has aplied it to an action seeking injunctive or declaratory relief." Third, that the construction the majority gave to the Clause was erroneous and unsound and that the Clause should be limited to "judicial proceedings in which individual legislators are sought to be rendered personally liable, civilly or criminally . . ." Fourth, he urged that the majority decision was so inconsistent with *Stamler* v. *Willis,* 371 F. 2d 413 (C.A. 7, 1966), that it was tantamount to evasion of the mandate of the Court of Appeals. "The *Stamler* opinion, contemplated," argued Judge Cummings, "that this judicial re-examination was to occur in this proceeding rather than in subsequent criminal proceedings." Finally, he saw no reason why the suit against the non-Congressional defendants could not stand.

This collision of views makes it evident that this case presents issues which are substantial, unsettled and of high public importance. At issue technically is the construction of a key clause in the United States Constitution and at stake is basic policy affecting whether a witness, summoned before a Congressional committee for an unconstitutional inquiry, has any way of protecting his rights other than to defend them in a criminal proceeding.

I.

The Speech or Debate Clause Does Not Apply To Cases Such As This Where Only Injunctive Relief Is Sought And There Is No Risk Of Personal Liability, Civil Or Criminal.

The central issue on this appeal is the relevance of the Speech or Debate Clause. That clause reads as follows:

> "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place." Art. 1, Sec. 6, Cl. 1.

The question is whether this clause flatly prohibits any sort of litigation against members of Congress for actions connected with their work in Congress; or whether the clause is to be read as immunizing the members of Congress only so far as is necessary to effectuate a rational policy of protecting them from pressures toward "self-censorship' in the performance of their congressional duties. The Court below, speaking through Judge Hoffman read the clause mechanically as immunizing members of Congress from all such litigation. In this, we submit, the Court is in fundamental error.

The precise question at issue is a novel one. There are only four Supreme Court precedents discussing the Speech or Debate Clause, and none are precisely in point. In *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880), the clause was held to immunize members of Congress for action for *damages* for false imprisonment; there was no occasion for any discussion of the problems presented by a suit for

injunctive relief. In *Tenney* v. *Brandhove,* 341 U.S. 367 (1951), the clause was not directly involved at all since the suit was for *damages* under the Civil Rights Act against members of the California Legislature. The Court noting the Clause as an expression of the privilege of legislators construed the federal statute in question as exempting state legislators from actions for civil liability. Once again, there was no occasion to discuss the issue of injunctive relief. In *U. S.* v. *Johnson,* 383 U.S. 169 (1966), the question was whether evidence of a speech made on the floor of Congress could be used in a *criminal prosecution* of a Congressman for accepting a bribe. The Court held that it could not, relying on the Speech or Debate Clause. Again, there was no occasion for the Court to consider the question of injunctive relief since the problem before it was exclusively one of criminal prosecution.

Finally, in *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), the most recent pronouncement on the problem, the suit was *in tort* against the chairman of a congressional committee for conspiring with state officials to violate certain property rights of the plaintiff. The Court held that under the circumstances the Speech or Debate Clause immunized the members of Congress from such a suit for damages. Once again, there was no occasion to consider the question of injunctive relief.

This is the sum total of Supreme Court holdings on the issue. It is abundantly clear that all that has been decided is that the Clause immunizes members of Congress from suits which would involve the imposition of criminal or civil sanctions.

In this state of the authorities, where then does one go for a clue as to the true meaning of the Clause? We would suggest two persuasive answers. The first would be found

by giving the clause a rational and functional purpose. In view of its history in the long fight of the English Parliament to achieve independence from the Crown, it would appear that its purpose was to prevent the inhibiting of the members of Congress in the performance of their duties by the threat of litigation which would affect them personally. The purpose, we would suggest, was to relieve the members of Congress of any pressures toward self-censorship. It is thus not surprising that Alexander Meiklejohn has seen it as the paradigm for the protection of free speech. On the view we urge here, the Constitution granted an immunity to the individual legislators which from one point of view is radical indeed, but the important point is that it was immunity from personal pressures and threats that would be generated by litigation which could, in some sense, inhibit or affect the free behavior of the legislator.

The Clause then should be defined and bounded by consideration of its rational purposes. It protects the members of Congress from litigation when litigation would carry some threat to them personally. They cannot be questioned in another place when such questioning might have the consequence of inhibiting them. When, however, as in the instant case, the litigation carries no threat of personal liability or personal sanction against the individual members of Congress but is simply a device to test the quality of their institutional action, there can be no point in immunizing them.

The second and decisive clue to the proper reading of the Clause arises from a consideration of the possibility of challenging congressional committee action by way of defense in prosecutions for contempt of Congress. It is an

unquestioned and longstanding rule that the witness may bring under judicial scrutiny the actions of an investigating committee, that he may thus under these circumstances call into account and question in another place, namely a court, the actions of members of Congress. Cf. *United States* v. *Rumely*, 345 U.S. 41 (1953); *Watkins* v. *United States*, 354 U.S. 178 (1957); *Yellin* v. *U.S.*, 374 U.S. 109 (1963); *Gojack* v. *U.S.*, 384 U.S. 702 (1966); *Bond* v. *Floyd*, 385 U.S. 116 (1966). More important, he may in the course of his defense in the criminal action or in any other lawsuit, subpoena the members of Congress as witnesses. Compare *U. S.* v. *Cooper*, 4 U.S. (4 Dallas 341) 859 (1800); *Long* v. *Ansell*, 293 U.S. 76 (1934); *James* v. *Powell*, 274 N.Y.S. 2d 192 (1966); *Luscomb* v. *Bowker*, 334 Mass. 468, 136 N.E. 2d 192 (1956). The Speech or Debate Clause must then be read in conformance with this rule permitting litigation over the constitutionality of the actions of members of Congress. When the witness litigates against the committee by way of defending in a prosecution for contempt of Congress, the salient facts are that the litigation carries no threat of personal consequences for the members of Congress and that its purpose is to test the legality and constitutionality of official institutional action. In brief "impersonal" litigation does not amount to "questioning in another place."

These two lines of analysis converge, we submit, on the conclusion that the Speech or Debate Clause does not apply to suits such as the instant one, seeking only injunctive relief by way of testing the constitutionality of official action when such suits carry no risk whatsoever of any personal consequences for the individual members of Congress.

And this is the conclusion reached in *Luscomb* v. *Bowker*, 334 Mass. 468, 136 N.E. 2d 192 (1956), a state case construing an analogous provision in the Massachusetts Constitution. In the *Luscomb* case, plaintiff sought declaratory and injunctive relief against members of a legislative investigating commission. The Court held that the Massachusetts "Speech or Debate" Clause was not a bar to the suit, saying:

> "In none of the authorities above cited do we find any support for the proposition that a member of the legislature is exempt from suit by an individual designed to test the constitutionality of action of the legislator." 136 N.E. 2d, at 197.

II.

The Court Below Was In Error In Dismissing The Action Against The Attorney General And The United States Attorney As Ancillary.

The principal concern of the majority opinion is with the constitutional immunity of the congressional defendants. Having discussed this question at some length and reached the conclusion that the congressional defendants were "privileged," the Court at the very end of its opinion in a single sentence dismissed the action against the two non-congressional defendants in the case, the Attorney General and the United States Attorney, with the single assertion that these actions are "ancillary." There was no discussion whatsoever of the issue, no citations to any relevant authorities, no argument for the conclusion.

It is obvious that reasons neither of precedent, nor logic nor policy dictate this result. The suits against the Attorney General and the United States Attorney are not so dependent upon the suit against the congression-

al defendants that they cannot stand alone. More important, if appellants were to be granted relief against the two non-congressional defendants, such relief would, as a practical matter, go a long way toward curing their grievance. It would give them effective protection against the imposition of sanctions on them for refusing to submit to the unconstitutional inquiry of the Committee.

Two Supreme Court precedents, a century apart, demonstrate the relevant principle. In *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880), a suit for damages for false imprisonment was brought against members of Congress and the Sergeant-at-Arms who had physically carried out the Congressional command. The Supreme Court held that Congress was powerless to punish the defendant for refusing to cooperate in its inquiry, since the inquiry itself was an unconstitutional intrusion into private matters. The Court then proceeded to hold that Article 1, Section 6 of the Constitution—the very provision involved in the instant case—gave the members of Congress an immunity against civil actions for damages. Nevertheless—and this is the point for present purposes—it found no impediment to the maintenance of an action for damages against the Sergeant-at-Arms.

In 1967 in *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), the Court was confronted with a highly analogous problem. The suit was an action for damages against the chairman and counsel of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate on the grounds that the defendants had conspired with Louisiana officials to seize various properties of the petitioners in violation of Fourth Amendment rights. The Supreme Court held that the Speech or Debate Clause provided an absolute immunity to the chairman of the Committee.

Nevertheless—and this is again the point for present purposes—it went on to hold that the Clause did not protect the Committee counsel and that the action against him should not have been summarily dismissed.

If the action against the Sergeant-at-Arms, Thompson, could survive the dismissal of the suit against members of Congress because of their constitutional immunity in *Kilbourn* v. *Thompson;* and if the action against Committee Counsel Sourwine could survive the dismissal of the action against the chairman of the committee in *Dombrowski* v. *Eastland,* it is difficult indeed to understand why in the instant case the actions against the Attorney General and the United States Attorney do not survive a dismissal of the action against the committee members because of their constitutional immunity.

III.

The Congressional Defendants Waived Whatever Privilege That May Be Afforded Under The Speech Or Debate Clause.

Judge Cummings in his dissent argued that the congressional defendants had waived any privilege arising under the Speech or Debate Clause by their extraordinary delay in asserting such a privilege. A brief resume of the chronology of these cases points up how very late the congressional defendants were in makin gtheir point.

Plaintiffs filed their first action on May 24, 1965. On the same day, Judge Hoffman dismised the action. On December 6, 1965, after the Chicago hearings for which plaintiffs had been subpoenaed, plaintiffs filed their second action. The congressional defendants moved to dismiss the second action "for lack of jurisdiction over the subject matter and for failure to state a claim upon which

relief can be granted." (2 R. 4, p. 172) On January 25, 1966, the Congressional defendants filed an amended motion to dismiss "for lack of jurisdiction over the subject matter, for lack of jurisdiction over the parties, for improper venue, and for failure of the complaint to state a claim upon which relief can be granted." (2 R. 4, p. 196) Defendants' motion was granted by Judge Hoffman. In the consolidated appeal of both cases to the Court of Appeals for the Seventh Circuit, defendants briefed and argued a variety of points, none of them claiming immunity of the Speech or Debate Clause. The Court of Appeals reversed the dismissal of the consolidated cases and remanded them to the District Court to be heard before a three-judge court. There the defendants renewed their motion to dismiss, raising the same grounds they had asserted before the single judge. On November 8, 1967, the three-judge court denied the motion to dismiss. At this point, the cases had been in sharply contested litigation for two and one-half years, with the defendants yet to pose the Speech or Debate Clause as a defense.

The congressional defendants then filed their answer denying the allegations of the complaints and raising nine affirmative defenses ranging from improper venue to mootness to "adequate remedy at law." There is no mention in the answer of the congressional defendants to the Speech or Debate Clause. (4 R. 56)

The congressional defendants followed up their answer with a motion for summary judgment again without referring to the Speech or Debate Clause. When the appellants embarked upon discovery in the court below, the congressional defendants, in opposition to discovery, for the first time resorted to the Speech or Debate Clause. In affidavits attached to a motion to stay discovery and dis-

miss suits against them each congressional defendant "assert(ed) my privilege against, and exemption from, any such demand in accordance with the rights, privileges, and immunities conferred upon me by the express terms and provisions of Article I, Section 6, Clause 1 of the Constitution of the United States." (5 R. 91 and 93)

It would seem clear, and this is certainly the way the defendants themselves view the matter, that the Speech or Debate Clause affords a privilege personal to the individual congressman. He may or may not assert it as he wishes. Assertion of this defense should be subject to the customary doctrines of waiver and estoppel. Those doctrines apply to the government as well as to private litigants. See *U.S.* v. *Oregon Lumber Co.*, 260 U.S. 290, 301 (1922); *Vestal* v. *C.I.R.*, 152 F.2d 132 (CADC, 1945); *U.S.* v. *Brown*, 86 F.2d 798 (CA 6, 1936); *NLRB* v. *Retail Clerks*, 203 F.2d 165 (CA 9, 1953) adhered to 211 F.2d 236 (CA 9, 1954), cert. den. 348 U.S. 839. An excellent statement of the doctrine of estoppel that is applicable here appears in *Albert* v. *Joralemon*, 271 F.2d 236, 240-41 (CA 9, 1959). Rule 12(g) and 12(h) of the Federal Rules of Civil Procedure make it clear that an affirmative defense not raised in the answer, or by motion prior thereto, is waived.

---

[1] The Congressional defendants, apparently sensitive to the circumstance that it had become too late to raise the privilege as an affirmative defense sought escape from their awkward position by raising it as a bar to jurisdiction. Judge Hoffman, however, in a complicated maneuver, treats the constitutional claims of privilege "as affirmative defenses to the action and finds on the defendants' motion for summary judgment that the Speech or Debate Clause is a complete legal defense."

The policy behind doctrines of waiver and estoppel are particular relevant in this case where the defendants waited to raise the point until after the loss of three motions to dismiss and an appeal and when they were confronted with the prospect of trial.

IV.

The Speech Or Debate Clause Protects Members Of Congress Only When Engaged In The Sphere Of Legislative Activity. Since There Was A Substantial Issue Of Fact In The Instant Case As To Whether Members Of This Committee Were So Engaged, It Was Clearly Error For The Court Below To Grant Summary Judgment.

The Supreme Court repeatedly has been careful in its decisions under Article I, Section 6 to indicate that there is an outer limit to the scope of the clause and that the limit is set by the legitimacy of the legislator's activity. At some point the individual legislators can be acting so far outside the legislative sphere as to forfeit the protection of the clause.

The rule is restated succinctly in the recent Supreme Court case, *Dombrowski* v. *Eastland,* 387 U.S. 82, 85 (1967):

> "It is the purpose and office of the doctrine of legislative immunity, having its roots as it does in the Speech or Debate Clause of the Constitution, *Kilbourn* v. *Thompson,* 103 U.S. 168, 204, 26 L.Ed. 377 (1881), that legislators engaged 'in the sphere of legitimate legislative activity', *Tenney* v. *Brandhove, supra,* 341 U.S., at 376, 71 S.Ct., at 788, should be protected not only from the consequences of litigation's results but also from the burden of defending themselves."

The point had been first made in passing in *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880) when the court spoke

of actions "of an extraordinary character" for which the members would be liable. It was crystallized in *Tenney* v. *Brandhove,* 341 U.S. 367, where the court after its review of the history, said "We come then to the question whether from the pleadings it appears that the defendants were acting in the sphere of legitimate legislative activity. Legislatures may not of course acquire power by an unwarranted extension of privilege." At 376.

The basic grievance of appellants and their basic challenge to the committee in this case, is that the Congressmen in a variety of ways were not acting with any proper legislative purpose and were infringing individual rights under the First Amendment. In brief, the very point at issue is whether the committee was acting "within the sphere of legitimate legislative activity."

As appellants Stamler and Hall make abundantly clear in their brief and especially in their appendix, dramatic controversial issues of fact as to the legitimacy of the committee's actions are involved in this case and would be presented at trial. Moreover, in their preparation for trial, as the appendix makes clear, appellants were engaged in a painstaking effort to present evidence on the illegitimate conduct of this committee over its history,—evidence which would dramatize *just how illegitimate* the committee activity had been and that this illegitimacy was a *structural, durable characteristic* of the committee's operations and not peculiar to this one case alone. It was therefore entirely improper for Judge Hoffman to attempt to dispose of a question so subject to factual controvedsary by summary judgment.

CONCLUSION

The issues in this case are thus novel, substantial and of high public importance; and Court below was in clear error in its disposition of them. We respectfully urge that this appeal be granted and the order below be removed.

Respectfully submitted,

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SUPREME COURT, U. S.
SEP 30 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1968.

No. 478.

JEREMIAH STAMLER, M.D. AND YOLANDA F. HALL,
Plaintiffs-Appellants,
v.
HON. EDWIN E. WILLIS ET AL.,
Defendants-Appellees.

No. 479.

MILTON M. COHEN,
Plaintiff-Appellant,
v.
HON. EDWIN E. WILLIS ET AL.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OF ACADEMIC AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT.

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Supreme Court of the United States.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OF ACADEMIC AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT.

The undersigned, law school deans and professors of law, respectfully request the Court to allow the appeal in this

case and to resolve the interesting and novel issues presented.

The principal issue is whether the civil courts may adjudicate the constitutionality of a statute establishing a congressional investigating committee operating in the First Amendment area, or whether in order to test such a charter an aggrieved citizen must be put to defense of a criminal prosecution.

Of the difficulty of this issue there can be no doubt, yet its resolution is important for several reasons.

First, the Court is confronted with a need to define the breadth and reach of its landmark decision in *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965), and particularly to decide whether the principles established in that case apply to equitable relief against operation of a congressional committee or a prosecution for contempt of Congress under a vague and overly broad statute.

Second, the continued employment by the Congress of the House of Representatives Committee on Un-American Activities and other investigating committees and subcommittees makes it likely that other suits like the instant one will be filed. See *Krebs* v. *Ashbrook,* 275 F. Supp. 110 (D.C. D.C. 1967), aff'd per curiam, — F. 2d — (D.C. Cir. 1968). Confusion relating to the proper role of judicial review over functions of Congress will be lessened by decision in the instant case.

Third, the Court should resolve the question of whether the Speech and Debate Clause extends to suits such as this, where no damages or other personal relief is sought. This classic and rarely construed clause plays a vital role in the maintenance of robust political debate. Its proper scope is especially important of resolution where, as conceded by the court below, legitimate First Amendment claims of citizens may be thwarted summarily by its application. This

fundamental conflict between these contending interests in free speech has broad ramifications and should be resolved at this early opportunity.

The undersigned respectfully request the Court to grant plenary hearing and resolve these interesting and significant questions.

Respectfully submitted,

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Nos. 478 and 479

In the Supreme Court of the United States

OCTOBER TERM, 1968

JEREMIAH STAMLER, M.D., AND YOLANDA F. HALL,
APPELLANTS

v.

HON. EDWIN E. WILLIS, ET AL.

MILTON M. COHEN, APPELLANT

v.

HON. EDWIN E. WILLIS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MOTION TO DISMISS OR AFFIRM

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In the Supreme Court of the United States

OCTOBER TERM, 1968

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v.

HON. EDWIN E. WILLIS, ET AL.

No. 479

MILTON M. COHEN, APPELLANT

v.

HON. EDWIN E. WILLIS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1) of this Court, the Solicitor General, on behalf of respondents, moves that the appeal from the judgment of the three-judge district court be dismissed, or that the judgment be affirmed.

STATEMENT

On March 18, 1965, the House Committee on Un-American Activities (the Committee) resolved to hold

hearings in Chicago, Illinois, concerning the organization and operation of the Communist Party in that area.[1] In accordance with Rule XIV of the Commit-

[1] *Be it resolved*, That hearings be held by the Committee on Un-American activities or a subcommittee thereof, at such times and places as the Chairman may determine, and that the staff be authorized to conduct investigations deemed reasonably necessary in preparation therefor, relating to:

1. As concerns the Chicago, Illinois area and the Illinois District of the Communist Party of the United States; the structure and organization of the Communist Party of the United States; its major objectives, and the strategical and tactical methods designed to aid in accomplishing such objectives; the major areas of Communist Party concentration; organizations created and controlled by the Communist Party to advance the policies and objectives of the Communist movement; Communist propaganda activities conducted in support of such objectives; and conspiratorial activities in aid of, or in association with, foreign Communist governments; and also like information regarding other Communist organizations in the Chicago, Illinois area, for the following legislative purposes:

(a) to provide factual information to aid the Congress in the proposal of any necessary remedial legislation in fulfillment of the directions contained in the mandate to the Committee by House Resolution 8, of January 4, 1965, and Public Law 601 of the 79th Congress;

(b) to assist the Congress in appraising the execution by the administrative agencies concerned of Title I of the Internal Security Act of 1950;

(c) to provide factual information to aid the House in the disposition of presently pending and proposed legislation, including, but not limited to, H.R. 4293, a bill to amend the Subversive Activities Control Act of 1950 so as to authorize the Federal Government to bar from access to defense facilities individuals who may engage in sabotage, espionage, or other subversive acts;

(d) consideration of the advisability of amending the Internal Security Act so as to impose certain disabilities, in the manner and form therein provided, upon those per-

tee's Rules of Procedure (Revised 1961), Chairman Edwin E. Willis appointed a subcommittee of five members with himself as chairman to conduct the hearings (Hearings, p. 329). Appellants were subpoenaed to appear before the Committee in Chicago on May 25, 1965. Appellants Stamler and Hall then filed suit, alleging that Rule XI of the Rules of the House of Representatives,[2] under which the Committee has been conducting its investigations, violates the First and Fifth Amendments and that the Committee had subpoenaed them "for the purpose of embarrassing, harassing and intimidating [them] and to deter [them] from the exercise of their rights, privileges and immunities as citizens of the United States, and in particular their rights to freedom of belief, speech, press, assembly and association guaranteed by the First Amendment" (App. 1, pp. 5–12).[3] They requested the convening of a three-judge district court; that the Committee be enjoined from operating in any manner under Rule XI; that the coming hearing be

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sons "affiliated with" Communist organizations as well as upon persons who are members thereof.

Be it further resolved, That the hearings may include any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct these hearings, may designate.

Exhibit 50 to the complaint, printed as a Supplemental Appendix on the appeal (hereafter "Hearings"), p. 326.

[2] As embodied in the Legislative Reorganization Act of 1946, 60 Stat. 823.

[3] "App. 1" refers to Appellants' Appendix in Nos. 15268, 15269 in the Seventh Circuit, appeals from the initial dismissal of the suit. "App. 2" refers to Appellants' Consolidated Appendix in Nos. 15268, 15269, 15668 and 15669 in the Seventh Circuit, appeals from the dismissal of the amended complaint.

declared "illegal and void"; and that the subpoenas served on them be quashed (App. 1, pp. 12–14). Appellant Cohen filed his petition for leave to intervene on the same day; it was granted without objection (App. 1, pp. 38–39).

At the conclusion of a hearing on a motion for a temporary restraining order and for the convening of a three-judge district court, the judge ruled orally that the challenge to the constitutionality of Rule XI was foreclosed by *Barenblatt* v. *United States,* 360 U.S. 109, and that no substantial federal question warranting a three-judge court was presented. He directed that the complaint be dismissed (App. 1, pp. 43–52).

The plaintiffs appeared for the Committee's sessions, and were called, among other witnesses, to testify. Their request for an executive session was denied (Hearings, pp. 538–542). After each was sworn and gave his name and address, he was asked to state the date and place of his birth; each then refused, on the advice of counsel, to cooperate with the Committee or to give any further testimony while the litigation challenging the Committee's power to proceed was pending (as it then was in the court of appeals). Each left the hearing room at this juncture (Hearings, pp. 547–552), without awaiting the questions which it is now argued would have been defamatory.

After denial of a motion to have the appeals remanded to the district court for the purpose of supplementing the complaint (App. 1, p. 112), appellants instituted two new actions in which an expanded complaint was filed. In addition to the relief which

had been sought in the first complaint, appellants asked for an injunction against the institution of contempt proceedings arising out of plaintiffs' appearances (compare App. 1, pp. 12–14, with App. 2, pp. 46–47). A three-judge district court was again requested and denied. The complaint was dismissed in a memorandum decision (App. 2, pp. 117–134), holding that insofar as the complaint sought an injunction against contempt proceedings it was premature and failed to include the United States as a party; if plaintiffs were entitled to relief they could obtain it when and if the Speaker of the House of Representatives certified their contempt for prosecution under 2 U.S.C. 192. As for the challenge to the constitutionality of Rule XI, the judge held that the plaintiffs were in no immediate danger of future interrogation by the Committee and that, consequently, they had no more standing to bring the suit at that juncture than did any bystander.

On a consolidated appeal from the orders dismissing the two complaints, the court of appeals vacated the judgment of dismissal and held that the district judge had "exceeded the single-judge preliminary inquiry jurisdiction" of 28 U.S.C. 2282 and 2284. Noting that the complaint alleged that Rule XI had been construed by the Committee to permit "the exposure of witnesses, including plaintiffs, to public scorn and obloquy and harassment and intimidation of these witnesses without any legislative purpose but rather to chill and deter them and others in the exercise of their first amendment rights," a majority of the court

concluded that the suit raised "a substantial constitutional question not foreclosed by the Supreme Court in *Barenblatt* v. *United States,* 360 U.S. 109," and thus warranted the convening of a three-judge court.

In the subsequent proceedings before the three-judge district court, appellants were permitted to add the Attorney General of the United States and the United States Attorney for the Northern District of Illinois as defendants, in order to assure them the possibility of effective relief on their prayer for an injunction against the then pending prosecutions.[4] Answers to the complaints were filed in December 1967 and January 1968; they asserted the official nature of the acts done[5] and reiterated comprehensive challenges to the jurisdiction of the court and the justiciability of the issues presented,[6] which had been raised previously in unsuccessful motions to dismiss.

[4] H. Res. 1060, 1061 and 1062, 89th Cong., 2d Sess. (1966), 112 Cong. Rec. 27439, 27486, 27500, 27641, directed the Speaker of the House to certify appellants' conduct to the United States Attorney for the Northern District of Illinois; the matters were presented to a Chicago grand jury and indictments were returned on July 18, 1967. Trials on these indictments are now pending.

[5] Answer of the congressional defendants, *passim.*

[6] "Affirmative Defenses and Objections to All Complaints and Amended Complaints as Amended and Supplemented.

* * * * * * *

"2. This Court lacks jurisdiction over the subject matter.

3. This Court lacks jurisdiction over the parties defendant.

4. There has been no sufficient process served on any of the defendants.

5. Venue does not lie in the Northern District of Illinois.

6. The complaints and intervening Complaints, and all amendments and supplements thereto, taken either indi-

Appellants then moved for production of documents (Committee records) and served a first set of interrogatories and subpoenas to take depositions of members of the staff of the Committee. Appellees opposed the interrogatories and motion for production of documents, and moved for summary judgment.

In March, 1968, the court entered an order requiring the Committee to answer interrogatories and produce records covering a ten-year period, without ruling on the motion for summary judgment. The congressional appellees then moved, *inter alia,* to stay all discovery against them and to dismiss the consolidated suit against them by reason of their immunity under Article I, Sec. 6, Cl. 1, of the United States Constitution; this motion was supported by a "Claim of Privilege and Exemption from Suit" from each of the nine congressional defendants (5 R. 87–89). The outcome of this motion was the decision and opinions of June 26, 1968, in which the court gave summary judgment for the congressional appellees on their claim of privilege, and dismissed the action as to the prosecutorial appellees as "ancillary."

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vidually or as a whole, fail to state a claim upon which relief can be granted.

7. The plaintiffs have an adequate remedy at law by defense of their pending criminal cases.

8. All issues are moot.

9. The three-judge court has no jurisdiction to grant mere declaratory relief."

Id., p. 24. The answer of the prosecutorial defendants adopted the answer of the congressional defendants.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE THE THREE-JUDGE DISTRICT COURT LACKED JURISDICTION OF THE PROCEEDINGS

The only legislative action which appellants challenge as unconstitutional and whose enforcement, operation and execution they seek to restrain is Rule XI, Section 18, of the Rules of the House of Representatives. It is this rule which confers the challenged authority of the Committee to make investigations. However, 28 U.S.C. 2282, on which appellants rely in their demand for a three-judge district court, applies in terms only to an "Act of Congress" (capitalization in the original). The House Rule is not an Act of Congress, and therefore the three-judge district court was improperly convened. *Krebs* v. *Ashbrook,* 275 F. Supp. 111, affirmed *per curiam,* No. 21,382, C.A.D.C., decided May 14, 1968; *Powell* v. *McCormack,* 395 F. 2d 577, 603, n. 54 (C.A.D.C.), petition for certiorari pending, No. 133.

The result is not changed because of the historical accident that the House Rule was once embodied in the Legislative Reorganization Act of 1946, 60 Stat. 812 (which was passed by both houses of Congress and signed by the President), or because the Committee itself has often cited that Act as a source of its authority. The district court opinion in *Krebs* correctly points out, we believe, that the effect of that action was dubious even for the term of Congress in which the statute was enacted. The Act states regarding the rules, such as Rule XI, that they

> * * * are enacted by the Congress:
>
> (a) As an exercise of the rule-making power of the * * * House of Representatives, respectively * * *
>
> (b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House. [60 Stat. 814].

This caveat, possibly required by Article I, Section V of the Constitution,[7] deprives the rules of the legislative force ordinarily associated with statutes, whose terms cannot be changed by the action of a simple majority of one House.[8]

Moreover, whatever effect the Reorganization Act might have been deemed to have had for the session at which it was enacted, it is no longer the operative source of the Rules of the House of Representatives. "Neither the House of Representatives nor its committees are continuing bodies." Cf. *Anderson* v. *Dunn,* 6 Wheat. 204, 231; *Marshall* v. *Gordon,* 243 U.S. 521, 542. It is the practice of the House to adopt its Rules—including the Rule which establishes the Un-American Activities Committee and defines the scope of its authority—at the beginning of each Congress." *Gojack* v. *United States,* 384 U.S. 702, 707 n. 4; see also, *Barenblatt* v. *United States,* 360 U.S. 109, 115,

[7] "Each House may determine the Rules of its Proceedings * * *."

[8] To treat a Rule as embodied in the Reorganization Act as an "Act of Congress" for the purpose of Section 2281, but not later amendments added by the House alone, would create an anomalous situation not easily resolved in practice.

and *Watkins* v. *United States,* 354 U.S. 178, 201–203. Although in adopting its rules the House may incorporate by reference the provisions of earlier rules and the Reorganization Act—*e.g.,* H. Res. 8, 89th Cong., 1st Sess., 111 Cong. Rec. 21, 25, the source of the Committee's authority in the present case—the current resolution is the operative act; the adoption of prior rules is itself an exercise of the constitutional authority of the House to make its own rules, and hence the only appropriate point of challenge.[9]

Passed by one house of Congress alone, without Presidential approval, these resolutions do not qualify as "Act[s] of Congress." There is no warrant for construing those words in Section 2282 as encompassing all legislative actions, and enlarging the category of cases where three judges are required and an appeal of right to this Court is allowed. See *Swift & Co.* v. *Wickham,* 382 U.S. 111, 128. Like its complement, Section 2281 (*Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 154), Section 2282 is "not * * * a measure of broad social policy to be construed with great liberality, but * * * an enactment technical in the strict sense of the term and to be applied as such." *Phillips* v. *United States,* 312 U.S. 246, 251. Just as the word "statute" in Section 2281 has not been expanded to include local ordinances or even enactments of the

[9] The Committee's frequent reference to the Reorganization Act as the source of its authority, "understandable as it is, does not constitute an analysis of the legal situation." *Krebs, supra,* 275 F. Supp. at 117. In *Gojack, supra,* at 706–707, n. 4, this Court rejected the notion that an authorization of a Committee investigation by a previous Congress might carry forward without renewal into a succeeding term. House rules equally require such renewal if they are to have force.

State legislature having only local application (*e.g.*, *Moody* v. *Flowers*, 387 U.S. 97), so here, the term "Act of Congress" can not appropriately be read to encompass rules promulgated by one House governing only its own internal procedures.

The result we suggest is fully consistent with the limited purpose of Section 2282. The provision was designed to protect federal regulatory schemes, chiefly of an economic nature. *Kennedy* v. *Mendoza-Martinez*, *supra*, at 154–155. No "regulatory scheme" is involved here. Rather, plaintiffs seek to enjoin the exercise of legislative powers. That the resulting disruption would be objectionable may be, as we argue below, a reason to deny the possibility of prior restraint of the Congress or its members. But it is not the problem with which Congress was concerned when it enacted Section 2282, and that statute does not apply to this case.

If we are correct in our conclusion that this was not an action "required * * * [to be] heard and determined by a district court of three judges," the appeal does not lie here under 28 U.S.C. 1253. Nor is there any other basis for a direct review by this Court.[10] Accordingly, the present appeal may be dismissed for

[10] Certiorari before judgment under 28 U.S.C. 1254(1) would not seem available here since the case, at this point, is in no sense "in the court of appeals." Moreover, even if the case were there, it is doubtful whether this Court could properly treat the papers filed here as petitions for certiorari, in the absence of such a timely prayer. 28 U.S.C. 2103 is inapplicable because these are not appeals "improvidently taken from the decision * * * of a United States court of appeals." So far as we are aware, the Court has never assumed that alternative certiorari jurisdiction existed when it determined that it lacked jurisdiction on direct appeal because a three-judge court had been im-

lack of jurisdiction. We note, however, that the time within which to perfect appeals to the court of appeals has now passed and that appellants' failure to follow that course is explained by that court's erroneous ruling that the case must be heard by a statutory court of three judges, from whose decision the appeal would lie here. In the circumstances, it may be appropriate to vacate the judgment below so as to permit the entry of a fresh decree by a single district judge from which appellants may perfect a timely appeal to the Seventh Circuit. See, *e.g.*, *Moody* v. *Flowers*, *supra*, 387 U.S. at 104.

II. IN THE ALTERNATIVE, THE JUDGMENT BELOW SHOULD BE AFFIRMED

Appellants have proceeded against both congressional and prosecutorial defendants, seeking relief both from specific consequences of the Chicago hearings and from unspecified, future hearings which they anticipate will be conducted by a like-minded Committee under a grant of authority identical to that which governed the Committee during the 89th Congress. For purposes of analysis, it will be helpful to deal separately (1) with the two heads under which relief is sought and (2) with the two classes of defendants against which relief is sought.

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properly convened. See, *e.g.*, *Phillips* v. *United States*, *supra*, 312 U.S. at 254; *Moody* v. *Flowers*, *supra*, 387 U.S. at 104. At all events, we do not believe the special circumstances warranting certiorari before judgment are present here. See Rule 20 of the Rules of this Court. Cf. *Powell* v. *McCormack*, 387 U.S. 933.

A. RELIEF FROM THE EFFECT OF THE CHICAGO HEARINGS

With specific respect to the Chicago hearings, appellants sought to restrain the holding of the hearings, to quash the subpoenas issued against them, to declare the hearings (and the rule under the authority of which they were conducted) void, and to restrain their indictment and prosecution for any contempt alleged to have been committed at the hearings.

(1) With respect to the congressional defendants, these demands are moot

The Committee has already reported appellants' alleged contempts to the House of Representatives, which has by resolution directed the Speaker to certify them to the United States Attorney, and the Speaker has done so. The term of the 89th Congress has ended and, with it, any possibility of contempt proceedings against appellants before the House itself. *Anderson* v. *Dunn,* 6 Wheat. 204, 231. There is nothing more the Congress or the Committee could do with respect to the Chicago hearings; consequently, there is no viable claim for equitable relief against the congressional defendants. The matter is entirely out of their hands.

(2) With respect to the prosecutorial defendants, all these matters are competent to be raised at appellants' trials for contempt, and there has been no showing of the extraordinary circumstances required to justify equitable relief in advance of those trials

This Court has stated and reaffirmed "[t]he general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional." *Speilman Motor Sales* v. *Dodge,* 295 U.S.

89, 95; *Douglas* v. *City of Jeannette*, 319 U.S. 157, 163–164; *Dombrowski* v. *Pfister*, 380 U.S. 479, 484–485. An exception has been recognized "on a showing of danger of irreparable injury 'both great and immediate,'" 319 U.S. at 164, but threats of the type of injury "incidental to every criminal proceeding brought lawfully and in good faith" are insufficient to make such a showing. *Ibid.*

Appellants rely upon *Dombrowski* v. *Pfister*, *supra*, and similar cases in arguing that they fall within the recognized exception. It is true that their case also involves allegations of a "chilling effect" on appellants' and others' exercise of their First Amendment rights, and assertions that this effect is the result of an overbroad enactment uncontained by acceptable narrowing constructions. However, appellants' case fails to match the circumstances of *Dombrowski* and like cases in one crucial respect: the allegations of "chill" entirely lack the personal concreteness which has characterized such allegations in previous cases where the Court has found "a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights," 380 U.S. at 485.[11] Thus, in *Dombrowski*, there was an

[11] It is also significant that in each of the previous cases, the statute challenged as vague directly governed the conduct of those subject to it. The rule here, on the other hand, establishes no rules of conduct as to which there might be misapprehension, but simply enables the Committee to carry on legislative business. Like the Constitution or a corporate charter, its terms are necessarily copious. As this Court has recognized, *Watkins* v. *United States*, 354 U.S. 178, 209, *Barenblatt* v. *United States*, 360 U.S. 109, 116–117, *Wilkinson* v. *United States*, 365 U.S. 399, 407–408, Communism is a legiti-

active threat of repeated arrests, seizures, and prosecutions of appellants under the challenged statute; in *Terrace* v. *Thompson,* 263 U.S. 197, there was a serious cloud imposed on plaintiff's property rights by the threat of prosecution; in *Reed Enterprises* v. *Corcoran,* 354 F. 2d 519 (C.A.D.C.), plaintiff feared a multiplicity of prosecutions in distant venues as a result of his distribution of allegedly obscene matter through the mails; multiplicity of prosecutions, and the high penalties entailed, were also decisive in *Ex parte Young,* 209 U.S. 123; see also, *United States* v. *Wood,* 295 F. 2d 772 (C.A. 5).

In contrast, appellants show no concrete basis for personal fear of the future. There is no hearing pending at which appellants are required to appear, nor has any showing been made that they are particularly likely to be called before any hearings which might be held in the future. Indeed, one cannot predict what authority the 91st Congress or its House of Representatives will confer upon the Committee on Un-American Activities, who among the members of that Congress will be appointed to that Committee, whether they will authorize any investigations, on what subjects and in what manner they will conduct them, and whom they will call to testify. Thus, appellants are subject to no overhanging threat of future action against them such as has characterized previous cases where injunctive relief against prosecution has been considered. No substantial impairment of appel-

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mate subject for legislative inquiry; any "vagueness" in Rule XI can be overcome by Committee adherence to fair procedure; and the propriety of a particular inquiry is to be judged by the practice of the Committee making it, not by its charter.

lants' rights can be expected if they await disposition of the criminal charges and subsequent review of any conviction, and no substantial benefit will accrue to them if the injunctive relief desired is afforded.[12] In sum, no sufficient basis for injunctive interference with the trial of the pending contempt indictments has been shown.

B. RELIEF FROM ANY PROCEEDINGS UNDER RULE XI IN THE FUTURE

In addition to the specific relief requested with respect to the Chicago hearings, appellants sought to restrain defendants, their agents, employees, attorneys and successors, "from the enforcement operation, or execution in any way whatever" of the Rule establishing the House Committee on Un-American Activities; in addition, they sought a declaratory judgment that the Rule is void.

(1) As to the congressional defendants, these prayers for relief should not be entertained

The propriety of injunctive relief against the Congress or some of its members[13] turns on considerations

[12] In *Dombrowski*, this Court was concerned with federal interference in a State prosecution, and to that extent its decision accommodated considerations of federalism absent in the present case. It has been assumed, however, that the decision is equally applicable to injunctions sought against federal criminal prosecutions. *Reed Enterprises* v. *Corcoran*, *supra*. There is, if anything, less reason to interfere where, as here, trial and appeal will be in courts particularly well acquainted with enforcement of federal rights; there is no reason to adopt a more permissive standard for injunctive relief.

[13] The complaints name as defendants only the Congressmen who were members of the Committee when the complaints were filed, some of whom are no longer members of Congress. The

of justiciability and separation of powers, as well as legislative privilege. "It seems quite clear that as a matter of basic general principle a court cannot interfere with or impede the processes of the Congress by proscribing anticipatorily its inquiries. This is so not only from the viewpoint of the Constitutional separation of powers between two branches of the Government but also from the practical viewpoint of simple procedural efficiency." *Pauling* v. *Eastland,* 288 F. 2d 126, 128–129 (C.A.D.C.), certiorari denied, 364 U.S. 900; cf. *Yellin* v. *United States,* 374 U.S. 109, 121; and see *Fischler* v. *McCarthy,* 117 F. Supp. 643 (S.D. N.Y.), affirmed on other grounds, 218 F. 2d 164 (C.A. 2d); *Methodist Federation for Social Action* v. *Eastland,* 141 F. Supp. 729 (D.D.C.). The fact that such relief has not previously been granted, nor its availability directly ruled upon by this Court, is itself an indication of its extraordinary nature. "The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance." *Mississippi* v. *Johnson,* 4 Wall. 475, 500. Whatever might be the case should one or more Congressmen, with or without congressional sanction, set themselves up in a

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prayers for relief, however, implicate a larger group: agents, employees, attorneys, others acting in concert with them, and successors. One could not now be certain that if, for example, the House sought to readopt Rule XI after an injunction had been entered, each Congressman involved would not be an other "acting in concert." At all events, it is plain that the Congressmen were being sued in their official capacity.

plainly non-legislative enterprise, the prospective investigations of Communism which appellants seek to enjoin reflect legitimate legislative concern and inquiry. *McGrain* v. *Daugherty,* 273 U.S. 135, *Barenblatt* v. *United States,* 360 U.S. at 117–123; hence claims for prior restraint of such inquiries should not be entertained. Cf. *Hutcheson* v. *United States,* 369 U.S. 599, 619 (opinion of Harlan, J.).

Even putting aside appellants' lack of concrete interest in the questions they seek to raise, the contemplated litigation is essentially abstract. As we have already noted, appellants cannot know whether there will continue to be an Un-American Activities Committee, what its authority and internal rules of procedure will be, who will be its members, what if any investigations they will authorize concerning what subjects of inquiry, whom they will call, and how they will in fact conduct themselves. Consequently, their action, if allowed, will accomplish little more than to put a Committee of the House of Representatives on trial, as it were, for its claimed past excesses and those of its predecessors. Cf. *Tenney* v. *Brandhove,* 341 U.S. 367, 377.

To the extent it is distinct from the arguments just outlined (which have been presented throughout this litigation), the defense of the congressional appellants based upon the Speech and Debate Clause arose when appellants' proposed discovery made it apparent that there would be large-scale interference with congressional business if the orders to produce were to be complied with and the interrogatories answered.[14]

[14] "The Clause confers personal immunity on each Member of the House, but it is not a strictly personal right since its purpose

We suggest that these effects argue strongly for the conclusion reached below—at least where, as here, a preliminary determination has been made on the basis of public records that the legislature or its arm has been acting within the sphere of legislative competence. The Congress has "the right * * * to pursue its legislative duties without judicial interference. * * * The courts have no power of interference, unless and until some event, such as arrest, indictment or conviction, brings an actual controversy into the sphere of judicial authority. The courts cannot interfere merely upon the petition of a person potentially liable to some such event. It is clear * * * that the doctrine of the separation of powers prevails here." *Pauling* v. *Eastland, supra,* 288 F. 2d at 129. That rule, announced in a case where the court was declining to grant an injunction against enforcement of an *outstanding* subpoena of a Senate committee, is especially persuasive here, where no adverse action against appellants is in current prospect.[15]

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is to protect the legislative process * * *" *Powell* v. *McCormack*, *supra*, 395 F. 2d at 599. Accordingly, appellants' argument that the right was waived when not raised in the answer is wide of the mark. A Congressman could not by negligence or even advertent silence waive a right that is not his alone.

[15] In none of the cases appellants cite was the claim for relief based upon as abstract a situation as now obtains with respect to the congressional defendants in this case, or directed against the Congress. Thus, in *Luscomb* v. *Bowker*, 334 Mass. 468, 136 N.E. 2d 192, the plaintiff sought to prevent publication of her name in a pending committee report; *Bond* v. *Floyd*, 385 U.S. 116, concerned a continuing dispute over plaintiff's right to a seat in the State legislature; *Dombrowski* v. *Pfister*, *supra*, involved an active threat of continued enforcement.

Declaratory relief holding Rule XI to be invalid so far as it concerns the Committee (even assuming it would be appropriate for a three-judge district court to grant, but see *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 154), would be no more appropriate than the injunctive relief appellants seek. True, it avoids the embarrassment to the Speech and Debate Clause which would be implicit in an injunction, with its threat of imprisonment or fine as penalty for disobedience. However, it still puts the federal courts in the untenable position of voiding a congressional rule on the basis of a prediction how a congressional committee will behave in the future, on behalf of plaintiffs who are not subject to an immediate threat. Judge Prettyman has forcibly stated one of the considerations underlying the rule against declaratory relief in this situation (*Pauling* v. *Eastland, supra,* 288 F. 2d at 129–130):

> Although on argument here Pauling concedes that he could not obtain from a court an injunction against the contemplated action of the Senate Subcommittee, or of the Senate, he contends that a declaratory judgment in respect to his rights and in respect to the validity of the contemplated action would not really interfere with the Senate. But such a differentiation seems to me to be without substance. It is unthinkable to me that, if the courts should hold a specific directive of a Committee of the Congress unconstitutional and void, the Committee would nevertheless attempt to enforce that directive. So, as I view it, a declaratory judgment would be as effective an impingement

upon and interference with legislative proceedings as a flat injunction would be. Thus I think that a declaratory judgment respecting the validity of contemplated Congressional action would violate the doctrine of the separation of powers and would be an illegal impingement by the judicial branch upon the duties of the legislative branch.

In this context, courts should insist upon a strong showing of the "actual controversy" required by the Declaratory Judgment Act, 28 U.S.C. 2201, before intervening. That ingredient is lacking from the action against the congressional appellees,[16] and the claim against them for declaratory relief was properly denied. See *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273.[17]

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[16] Whether the requested declaratory judgment would be appropriate as against the prosecutorial appellees in connection with the pending indictments is a question to be decided on the same basis as appellants' request for injunctive relief against that prosecution. *Eccles* v. *Peoples Bank*, 333 U.S. 426, 431, and cases cited. See discussion, *supra*, pp. 13–16.

[17] Two recent decisions in which actions for declaratory relief were sustained against challenge reveal concrete interests on the part of the plaintiffs which are lacking from the action against the congressional appellees. In *Evers* v. *Dwyer*, 358 U.S. 202, plaintiff was told that his color required him to sit in the rear of a bus and he was threatened with arrest; the record showed that the bus company and municipal officials intended to continue actively the enforce the State statute requiring such segregation until its constitutionality had finally been adjudicated. In *Beacon Theatres* v. *Westover*, 359 U.S. 500, plaintiff had been directly threatened with treble-damage actions under the Antitrust Laws, and suffered continuing impairment of its business.

(2) As to the prosecutorial defendants, these prayers were properly dismissed as ancillary

Appellants' chief reliance regarding the dismissal of the action against the Attorney General and the United States Attorney is on two cases in which this Court sustained actions against congressional staff members, while dismissing actions against members of Congress, *Kilbourn* v. *Thompson,* 103 U.S. 168, and *Dombrowski* v. *Eastland,* 387 U.S. 82. In both cases the Court refused to permit the staff members to claim privilege under the Speech and Debate Clause, and allowed the suit to proceed insofar as it sought a damage recovery against them for the wrongs which they, as individuals, had allegedly committed. We agree that the prosecutorial appellees cannot claim the shelter of the Speech and Debate Clause. But we submit that these members of the Executive Branch are not proper defendants on the claims for broad relief against the future operation of the Committee under Rule XI.

The ancillary nature of the claims against the prosecutors was conceded in appellants' successful argument to the court below on their motion for joinder. Their argument, made after it had been determined to seek an indictment on the basis of the House Resolutions, was that joinder was necessary to secure them complete relief, Fed. R. Civ. P. 19(a), by protecting them against prosecution for the contempts they were alleged to have committed. Protection against the pending prosecutions was the possible remedy available as against the prosecutors, and the only relief requested against them.

It is plain that the Attorney General and the United States Attorney for the Northern District of Illinois would not be proper parties to a suit seeking only declaratory and injunctive relief against the future operation of the Committee under the authority of Rule XI. Neither official is in any way connected with the Committee or charged with administration of the Rule. Their participation becomes relevant, if at all, only when, as in the present case, the Committee has successfully moved the House of Representatives to seek a contempt prosecution of some person alleged to have been contemptuous of the Committee during the course of a hearing under the Rule. If relief against future operation of the Committee under Rule XI were granted against them, it could have no more than the peripheral effect of denying the Committee access to the courts in contempt matters.[18] Thus, the suit was properly dismissed in this respect once it had been determined that it would not lie against the congressional defendants. *Williams* v. *Fanning*, 332 U.S. 490, 494; *Dombrowski* v. *Burbank*, 358 F. 2d 821, 823 (C.A.D.C.).

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[18] The House retains power directly to punish for contempt. *Anderson* v. *Dunn*, 6 Wheat. 204; *Jurney* v. *MacCracken*, 294 U.S. 125.

CONCLUSION

For the reasons stated, these appeals should be dismissed,[19] or the judgment below affirmed.

Respectfully submitted.

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OCTOBER 1968.

[19] As noted earlier (*supra*, p. 12), if the Court should conclude that it lacks jurisdiction to reach the merits, it may deem it appropriate to vacate the judgment below to preserve appellate remedies, rather than simply dismiss the appeals.

U.S. GOVERNMENT PRINTING OFFICE: 1968

In the
Supreme Court of the United States

October Term, 1968

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,
Plaintiffs-Appellants,

vs.

HON. EDWIN E. WILLIS, et al.,
Defendants-Appellees,

MILTON M. COHEN,
Intervening-Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

APPELLANTS' REPLY TO MOTION TO DISMISS OR AFFIRM

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PRELIMINARY STATEMENT

The response of the Solicitor General places this case in an extraordinary posture.

After three years of complicated litigation, the Court of Appeals for the Seventh Circuit directed the convening of a three-judge court, and the three-judge court unanimously denied appellees' motion to dismiss, ordered appellees to answer the complaints, and granted certain pretrial discovery motions.

With the pleadings at issue and preparation for trial thus begun, appellees urged dismissal on a ground, never before relied upon, *viz.*, immunity from suit under the Speech or Debate Clause of the Constitution. A majority of the three-judge court accepted this contention and entered judgment for the appellees. It is this judgment the Solicitor is defending on appeal.

The Solicitor has now *abandoned* the ground upon which the majority of the three-judge court predicated its decision. This abandonment is a tacit confession that the Speech or Debate Clause affords no valid basis for dismissal of this case.

In an effort to salvage the result, the Solicitor undertakes to resurrect a series of contentions which have been made time and again to the various judges who have heard this case. Every one of those contentions has been previously advanced to and rejected by the three-judge court and the Court of Appeals. Thus, tacitly conceding that the majority below erred, appellees are in reality attempting to turn this into an interlocutory appeal from the prior decisions which were adverse to them.

In this posture of the case it is unnecessary to argue further the soundness of our contentions concerning the Speech or Debate Clause.

Rather, we shall concentrate our reply on two matters:

First, the Solicitor challenges the propriety of convening a three-judge court to hear appellants' constitutional challenge to Rule XI of the Legislative Reorganization Act. When this contention was rejected by the Court of Appeals for the Seventh Circuit, the government chose not to seek review in this Court. The contention was again rejected by the three-judge court when it denied appellees' motion to dismiss. We deal with this point in Part I, below.

Second, we deal in Part II with the various grounds rejected below but nevertheless raised in this Court by the Solicitor to justify dismissal of the complaints.

I.

A THREE-JUDGE COURT WAS PROPERLY CONVENED BECAUSE APPELLANTS SEEK AN INJUNCTION AGAINST ENFORCEMENT OF AN ACT OF CONGRESS.

The suggestion of the Solicitor that appellate review in this Court is not now appropriate rests upon a contention that a three-judge court was improperly convened in that the complaint did not seek an injunction against an "Act of Congress" within the meaning of Title 28 U.S.C. § 2282.

Since the complaint did in fact request an injunction against the enforcement of provisions of the Legislative Reorganization Act of 1946* which embody Rule XI, the charter of the Committee, this argument requires an assumption that the Legislative Reorganization Act is not an "Act of Congress" within the meaning of the three-judge court statute. Appellees unsuccessfully advanced this argument to the Court of Appeals for the Seventh Circuit in their petition for rehearing. It was rejected

* Titles I and II of the Legislative Reorganization Act of 1946 are attached hereto as Appendix A.

by the Court of Appeals *en banc*. After much deliberation,* the government decided not to seek review of that ruling in this Court. The contention was again pressed on the three-judge court in the motion to dismiss, and was again rejected. (4 R. 52.) Appellees now seek to raise the contention again, relying principally upon the majority opinion of the three-judge court in *Krebs* v. *Ashbrook*, 275 F. Supp. 111 (D.D.C. 1967), affirmed per curiam No. 21,382 (D.C. Cir. May 14, 1968), petition for certiorari now pending in this Court, No. 633.

We suggest to the Court that the rejection of this argument by both courts below, and the decision of the government not to appeal the ruling of the Court of Appeals, were based upon sound considerations. An analysis of both the Legislative Reorganization Act of 1946 and the decisions of this Court interpreting the scope and impact of Section 2282 reinforce the conclusion of the courts below that a three-judge court was properly convened here.

A.

The Rules Establishing and Governing the House Committee on Un-American Activities Are Embodied In and Are an Integral Part of the Legislative Reorganization Act of 1946.

Appellants seek a permanent injunction against enforcement of that portion of the Act of Congress known as the Legislative Reorganization Act of 1946** which estab-

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* The government thrice requested the Court of Appeals to stay its mandate so as to afford the Solicitor General an opportunity to determine whether or not to seek review by this Court.

** Chapter 753, Section 121 (b) (Public Law 601, 79th Congress, 2nd Session, 60 Stat. 812, 828.)

lishes the House of Representatives Committee on Un-American Activities (the "Committee"). The Senate approved the Bill for this Act (S. 2177) on June 10, 1946, and the House approved the Bill with amendments on July 25, 1946. The Senate concurred in these amendments on July 26, 1946.* As in the case of all other Acts of Congress, the Bill was transmitted to President Truman for approval or veto. President Truman approved the Bill on August 2, 1946.

The portions of the Act establishing and governing the Committee have never been amended or repealed, and remain in full force.

This is indisputably an Act of Congress. It is so entitled:

> "An Act to provide for increased efficiency in the Legislative branch of the Government. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . .*"

The Act contains six Titles. Title I embodies rules of the Senate and the House of Representatives. Part 2 of Title I contains Rules X and XI of the House, which establish *(inter alia)* the Committee and define its functions. Part 3 provides for joint committees of Congress and numerous joint congressional procedures. This title is denominated as "an exercise of the rule making power of the House and Senate respectively . . . with full recognition of the constitutional right of either House to change such rules . . . ."

Title II contains miscellaneous administrative provisions dealing with personnel, the capitol, and administrative matters, affecting the functioning and procedure of the

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* 92 Cong. Rec. 6578, 10104, 10152 (1946).

House and Senate. Part 1 of Title II is entitled "Statutory Provisions Relating to Congressional Personnel," and Part 2 is entitled "Statutory Provisions Relating to Congressional Committees." Title II authorizes appropriations to the standing committees, including appropriations for personnel of the House Committee on Un-American Activities. The Committee regularly makes and publishes reports with respect to its staff personnel and salaries and has in each instance stated that it has done so pursuant to § 134(b) of Title I of the Legislative Reorganization Act of 1946. *E.g.*, 111 Cong. Rec. 20003 (1965).

Title III concerns the regulation of lobbying. Title IV is the Federal Tort Claims Act. Title V is the General Bridge Act relating to the consent of Congress for bridges over navigable waters. Title VI concerns compensation and retirement pay of members of Congress.

The Short Title section makes clear that the title, "Legislative Reorganization Act of 1946," refers to all titles and sections. The Separability Clause likewise refers to "this Act."

Thus, it is clear that the Committee's creation and existence is provided for, and that its continued functioning is governed by, an Act of Congress which followed the usual course through both houses of Congress as required by Article I, Section 7 of the United States Constitution, and was submitted to and approved by the President as in the case of other Acts of Congress.

Appellees ask this Court to ignore the inclusion of Rule XI and other Rules in this Act of Congress by calling it an *"historical accident"* which is "deprive[d] . . . of the legislative force ordinarily associated with statutes." (Motion to Dismiss or Affirm, p. 8; emphasis added.)

On the contrary, the Legislative Reorganization Act was a thoroughly considered legislative enactment. It was based upon the Report of a Joint Committee on the Operation of Congress,* co-chaired by Senator Robert M. LaFollette, Jr. and then Representative A. S. "Mike" Monroney, which held 39 public hearings and called 102 witnesses.** It attracted the attention of numerous commentators before, during, and immediately after its consideration and passage. See, *e.g.*, Hoffman, "Congress Streamlined," 7 Fed Bar J. 378 (1946); Editorial, "Organization of Congress," 7 Fed Bar J. 264 (1946); Kefauver, "The Challenge to Congress," 6 Fed. Bar 325 (1946); Comment, "Is Congress Outmoded?—A Study of Proposals for Reorganization," 34 Geo. L. J. 201 (1946); Shull, "The Legislative Reorganization Act of 1946," 20 Temp. L. Q. 375 (1946); Borchardt, "Legislative Supremacy and Congressional Reorganization," 35 Geo. L. J. 310 (1946).

The reorganization of "its present obsolete and overlapping committee structure" was termed in the Joint Committee Report "the first and most important test of whether Congress is willing to strengthen itself and its organization to carry the tremendous workload that present day governmental problems place upon it." (Report, p. 2.) See Hoffman, op. cit., 7 Fed. Bar J. at 380. It was only after intensive deliberation and debate covering 190 pages in the Congressional Record that Congress adopted changes in the Rules of both Houses affecting committee structure and in doing so resorted to statutory enactment. 92 Cong. Rec. 6344-46, 6365-75, 6390-98, 6439-54,

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* Sen. Rep. 1011, 79th Cong., 2d Sess. (1946). ("Report")

** Report, p. 1.

6455-69, 6517-21, 6522-41, 6547-75, 10037-10104, 10139-52 (1946).

The propriety of the form of the enactment was drawn into question and hotly debated. 92 Cong. Rec. 6391-94, 6457, 10040, and 10064 (1946). See also Shull, p. cit. 20 Temp. L.Q. at 376.

The proviso in Title I, that either House may change the Rules contained in the Act, does not deprive the Act of legislative force, or in any sense make the Act other than an Act of Congress. Furthermore, insofar as pertinent here, the House has not exercised any such prerogative. Moreover, many other Acts of Congress, passed and approved in the usual fashion as was the Act in question, may be altered, repealed or rendered nugatory by other than the ordinary constitutional procedure. The Committee itself has taken credit for adoption of two such Acts of Congress, 50 U.S.C. § 792, which permits inaction by the Attorney General to terminate the existence of the Subversive Activities Control Board, and 50 U.S.C. §798 (enacted June 30, 1953), which permits the President to terminate 50 U.S.C. §794, an espionage statute, by declaring an end to the period of national emergency declared on December 16, 1950. In recent years, Congress has consistently permitted tariff reductions by Presidential action. 19 U.S.C. §1351(a); Pub. L. 87-794 §274(c); Pub. L. 85-868 §2; 19 U.S.C. §1821. See also Joint Res. Jan. 29, 1955, 69 Stat. 7 (President can terminate power to protect Formosa); Pub. L. 88-408, August 10, 1964 (President can terminate power to protect Southeast Asia); Trading with the Enemy Act §5, 40 Stat. 411, 415 (President given power to suspend operation of the statute). Similarly under certain circumstances a treaty may supersede a statute with-

out the concurrence of the House of Representatives. Corwin, ed., The Constitution of the United States, 421-22 (1952).

As Chief Judge Bazelon pointed out in his dissenting opinion in *Krebs* v. *Ashbrook,* (275 F. Supp. 111, 119-120): "Section 2282, however, speaks of 'any Act of Congress,' and neither Congress nor the Supreme Court has provided us with sufficient guidance to carve out exceptions to it."

Appellees also argue that any effect of the Legislative Reorganization Act on rules of the House was confined to the session of enactment. (Motion to Dismiss or Affirm, p. 9.) However, *precisely the opposite is true.* Title I containing changes in the Rules did not by its terms become effective until January 2, 1947, the opening of the *succeeding* 80th Congress. (§142)

It is thus clear that the Congress thought that the rules enacted in the Legislative Reorganization Act would be binding on subsequent Congresses, except insofar as specifically amended.

Appellees nevertheless argue that House Resolution 8 of the 89th Congress incorporating the Legislative Reorganization Act is "the operative act" and "hence the only appropriate point of challenge." (Motion to Dismiss or Affirm, p. 10.) Their principle authority is *Gojack* v. *United States,* 384 U.S. 702, 707, n.4.

However, that case did not directly involve the relevance of the Legislative Reorganization Act as a source of Committee authority. *Cf. Watkins* v. *U.S.,* 354 U.S. 178 (1957). In *Gojack,* the question was whether, in absence of a specific Committee authorization for an investigation, an indictment failing to allege such an authorization was defective despite an asserted "continuing investigation"

of the witness-defendant's labor union. This Court held that Congress had not authorized a continuing investigation. The Court added a dictum, in a footnote, that an *authorization* "must occur during the term of the Congress in which the investigation takes place. Neither the House of Representatives nor its committees are continuing bodies. *Cf., Anderson* v. *Dunn,* 6 Wheat, 204, 231; *Marshall* v. *Gordon,* 243 U.S. 521, 542."* This Court then commented that "It is the *practice* of the House to adopt its Rules—including [Rule XI]—at the beginning of each Congress." (Emphasis added.)

Appellees would subtly elevate this "practice" into a constitutional requirement. However, whatever may be the current practice of the House of Representatives with respect to biennial adoption of rules, the House has often enacted statutes or rules with the undertanding that they would govern procedure in the House during subsequent Congresses unless changed by rule pursuant to Art. I, Sec. 5 of the Constitution. In 1860, the House amended its rules providing (Cong. Globe, 36th Cong. 1st Sess. 1211-12 (1860)):

> "These rules shall be the rules of the House of Representatives of the present and succeeding Congresses unless otherwise ordered."

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* Nor do these cases hold or suggest that the House must reenact its rules biennially. In *Anderson* v. *Dunn*, 6 Wheat. 204 (1821), this Court held that since the House has power to imprison those in contempt, an action for trespass brought by the contemnor after his release would not lie. The Court added in dictum that such imprisonments would be limited by adjournment or periodical dissolution. (6 Wheat. at 231.) In *Marshall* v. *Gordon*, 243 U.S. 521 (1917), this Court held that the contempt power did not extend to imprisonment of a United States Attorney for directing an intemperate letter to the chairman of a House committee. The Court in dictum cited the dictum in *Anderson* v. *Dunn, supra.*

The rule was adopted after Rep. Washburn gave assurances that the provision would not violate the Constitution because the House could change the rules at any time.

Relying upon this rule the House enacted no rules during the 41st, 42nd and 43rd Congresses. See statement by Senator Dawes, 4 Cong. Rec. 434 (1876).

A similar practice was followed from the beginning of the Government until 1876 under which certain of the affairs of Congress were governed by joint rules, occasionally amended but never reaffirmed by either House of Congress. Dechsler, House Rules and Manual, p. 23 § 61 (1961 ed.). In 1876, however, the joint rules were abrogated when the Senate conditioned their continuance upon reenactment by the House. See 4 Cong. Rec. 309-10, 431-38, 517-20, 5567 (1876). Nevertheless, in the next session of Congress, the Speaker maintained that the joint rules governed the House in each succeeding Congress without reenactment.*

The statutory provisions for joint committees of Congress created by the Legislative Reorganization Act and other statutes are similar to the old joint rules. See, *e.g.*, 26 U.S.C. §8002 (Composition of Joint Committee on Internal Revenue Taxation); 44 U.S.C. §1 (Composition of Joint Committee on Printing and Binding). F'ther house of Congress by a change of its rules or a refusal to act could render these statutes ineffective as was done to the joint rules. The House need not reenact or reaffirm

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* See also 4 Hind's Precedents of the House of Representatives §§ 6743-54 (1907). This practice was referred to by Senators Vandenberg and LaFollette in support of the statutory form of rule changes in the Legislative Reorganization Act. 92 Cong. Rec. 6392-93 (1946).

these statutes every two years. Nor must the House readopt 2 U.S.C. §§ 192, 194, which in part govern the internal congressional procedures for reporting and certifying a contempt of Congress, and under which appellants were reported and certified as in contempt of the Committee and indicted. See *Wilson* v. *United States,* 369 F.2d 198 (D.C. Cir. 1966).

In short, contrary to appellee's contentions, the Legislative Reorganization Act creates and governs the rules of the House and if anything it is House Resolution 8 that is surplusage. That Resolution is most revealing. It states that "all applicable provisions of the Legislative Reorganization Act of 1946 as amended, be, and they are hereby adopted as the Rules of the House of Representatives. . . . " H. Res. 8, 111 Cong. Rec. 21 (89th Cong. 1st Sess. Jan. 4, 1965).

House Resolution 8 assumes and is founded upon the continued viability of the Legislative Reorganization Act because:

1) It refers to the Act "as amended";
2) It refers to the Act as "applicable" and permits the terms of the Act to govern "applicability";
3) It incorporates by a single reference the myriad vital provisions for the functioning of the House as enacted in the Act.

The House Resolution understandably reasserts the underlying constitutional power to deviate from the Legislative Reorganization Act by the adoption of contrary rules. The House has not exercised that power in respect of Rule XI, Section 18q, of the Act establishing the Committee. The Act remains as the underlying authority for the Rules of the House.

B.

This Court, the Committee and the Executive Branch Have Uniformly Acknowledged That The Committee's Existence and Authority Are Based Upon an Act of Congress.

The lack of substance of appellees' contentions about the Legislative Reorganization Act is further demonstrated by the uniform acknowledgment of the Act as a source of authority by every organ of government which has expressed itself on the subject. This Court, in both majority and dissenting opinions, the Committee in its formal statements of its own authority, and the Department of Justice in the indictments in this very case, and in briefs submitted to the Court of Appeals in this very case* all uniformly acknowledge that the Legislative Reorganization Act is a statutory source of authority for the existence and functioning of the Committee. In view of the extensive and widely heralded congressional deliberations preceding the enactment of the Act, any other posture would have been inconceivable.

The Committee has cited the Act as the basis for its authority in each of its many publications issued from 1946 through 1967. For example, the Committee resolution authorizing the May, 1965, hearings in Chicago cites "Public Law 601" as the law which created the Committee. (Ex. 50, p. 326.) The Chairman of the Committee announced at the outset of those hearings that the Committee "is authorized by a rule of the House *and a Federal statute.*

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* In their briefs to the Court of Appeals in the instant case the prosecutor-appellees stated: "The authority of the Committee on Un-American Activities of the House of Representatives to conduct investigations is found in Public Law 601, 79th Congress (1946), Chapter 753, 2d Session, 60 Stat. 812." (Appellee's brief in No. 15268-69, p. 4; Appellee's brief in 15668-69, p. 8)

. . . " (Ex. 50, p. 327; emphasis added.) Beginning on June 28, 1967, *after* having belatedly claimed in this very case that no Act of Congress is involved*, the Committee for the first time in its history, without explanation, omitted its customary reference to the Legislative Reorganization Act of 1946 from its publications.**

The prosecution-appellees have also claimed that the Legislative Reorganization Act of 1946 is the Committee's enabling act and charter. The indictments returned against appellants on July 18, 1967, as similar indictments returned over the years against other witnesses, commence as follows:

> "The Committee on Un-American Activities of the House of Representatives, *created and authorized by the Legislative Re-Organization Act of 1946,* Chapter 753, Sections 121 and 136 (Public Law 601, 79th Congress, Second Session, 60 Stat. 812, 822, 823 and 828) and by House Resolution 8 of the 89th Congress, adopted by the House of Representatives of the United States on January 4, 1965." (Emphasis added.)

Accordingly, the belated claim of the Committee and of the Department of Justice that Rule XI is not an Act of Congress, never advanced before this case, is at odds with the prior consistent (and we respectfully suggest, the correct and commonly accepted view) published declarations of the Congress, the Committee itself and the Department of Justice that the Committee's existence and powers emanate from an Act of Congress.

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* Petition for Rehearing, pp. 29 to 31, filed in the Court of Appeals for the Seventh Circuit on January 3, 1967.

** 1966 Annual Report, H. Rep. 460 (1967), p. VI; Conduct of Espionage with the United States by Agents of Foreign Communist Governments (1967), p. IV.

In reviewing a number of criminal prosecutions for contempt of this Committee, this Court has repeatedly referred to the Legislative Reorganization Act as a grant of authority to the Committee. In *Watkins* v. *United States*, 354 U.S. 178, 203 (1957), this Court recognized that "the Committee's charter was embodied in the Legislative Reorganization Act." See also *Barenblatt* v. *United States*, 360 U.S. 109, 120, fn. 15 (1959); *Wilkinson* v. *United States*, 365 U.S. 399, 401, fn. 2 (1961); *Deutch* v. *United States*, 367 U.S. 456, 475-76 (1961) (Whitaker, J. dissenting).

C.

The Dual Source of the Mandate of the Committee Does Not Deprive the Three-Judge Court of Jurisdiction

Even if the Committee's authority is also derived from Rules of the House adopted at the commencement of each Congress,* as well as from the Legislative Reorganization Act of 1946, a three-judge court is necessary. Since the rule is already incorporated in and made a part of the 1946 Legislative Reorganization Act, at best the House Resolution creates a dual source of authority for the mandate. Since the authorizing resolution incorporates by reference "all applicable portions of the Legislative Reorganization Act of 1946, as amended," the 1946 Legislative Reorganization Act continues to apply and it follows that the need for a three-judge court under 28 U.S.C. §2282 is in play. (H Res. 8, 89th Cong., 1st Sess., Jan. 4, 1965.)

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* Appellants contend that those rules are "Acts of Congress" as those words are used in Section 2282; see Part E below.

As Chief Judge Bazelon said in his dissenting opinion, in *Krebs* v. *Ashbrook,* 275 F.Supp. 111, 119-20 (D.D.C. 1967):

> "By incorporating Rule XI into the Legislative Reorganization Act of 1946, 60 Stat. 812, Congress established a dual authorization for the House Committee on Un-American Activities. The Committee itself has not hesitated to state that it derives its mandate from an Act of Congress as well as from rules of the House. In my view, therefore, this case does involve an injunction to restrain enforcement of an Act of Congress and falls within provisions of 28 U.S.C. 2282. *The fact that plaintiffs are also trying to enjoin enforcement of a rule of the House does not render §2282 inoperative.*" (Emphasis added.)

The holding of this Court in *Florida Lime and Avocado Growers, Inc.* v. *Jacobsen,* 362 U.S. 73 (1960), dealing with the similar provisions of Section 2281 (relating to state statutes) is dispositive. The plaintiffs sought to enjoin the enforcement of a state statute on dual grounds, constitutional as well as non-constitutional. It was alleged that a California statute was violative of the Commerce and Equal Protection Clauses of the United States Constitution and of a federal statute. A three-judge court was convened, but it dismissed the action on the ground that Section 2282 applied only where either the sole ground or all grounds of attack were constitutional and that since one of the dual claims of invalidity was predicated on a federal statute, Section 2281 had been improperly invoked. This Court reversed (362 U.S. at 84-85):

> "To hold that only one judge may hear and decide an action to enjoin the enforcement of a state statute on both constitutional and nonconstitutional grounds would be to ignore the explicit language and the manifest purpose of § 2281, which is to provide for a three-

> judge court whenever an injunction sought against a state statute may be granted on federal constitutional grounds. Where a complaint seeks to enjoin a state statute on substantial grounds of federal unconstitutionality, then even though nonconstitutional grounds of attack are also alleged, we think the case is one that is '*required* by . . . Act of Congress to be heard and determined by a district court of *three* judges.'" (Emphasis in original.)

This rule has been uniformly followed by this Court. *Flast* v. *Cohen*, 392 U.S. 83, 90-91 (1968); *Zemel* v. *Rusk*, 381 U.S. 1, 5-6 (1965).

If a three-judge court is required to hear an attack upon a statute on both constitutional and non-constitutional grounds, it follows that a three-judge court is required to hear a constitutional attack upon an enactment which is contained in an Act of Congress and referred to in a House resolution.

D.

In Any Event, a Three-Judge Court Is Required to Hear Cases Involving Rule XI of the House of Representatives

Even if it be assumed, despite the authority to the contrary to which we have directed attention, that the Committee's authority is derived exclusively from House Resolution 8 of the 89th Congress, a three-judge court was nevertheless properly convened.

It is highly anomalous that appellees, members of the Congress and officers of the United States Government, urge otherwise. Section 2282 was intended "to prevent a single federal judge from being able to paralyse totally the operation of an entire regulatory scheme . . . by issuance of a broad injunctive order." *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 155 (1963). The significance of congressional resolutions, and the deference owed them by the

courts, have been explained in *United States* v. *Rumely,* 345 U.S. 41 (1953). In that case this Court affirmed the reversal of a conviction for contempt of Congress by a witness summoned before a House Select Committee on Lobbying Activities which was established pursuant to a resolution of the House. This Court criticized the extremely vague language of the authorizing resolution, and adverted to the serious constitutional difficulties posed if the language of the resolution were to be construed to apply to the defendant.* This Court said (345 U.S. at 43, 45):

> "Although we are here dealing with a resolution of the House of Representatives, *the problem is much the same as that which confronts the Court when called upon to construe a statute* that carries the seeds of constitutional controversy. . . .
>
> * * *
>
> "Patently, the Court's duty to avoid a constitutional issue, if possible, applies not merely to legislation *technically speaking* but also to congressional action by way of resolution. [Citation.]" (Emphasis added.)

Like appreciation for the significance of congressional resolutions was shown in *Methodist Federation For Social Action* v. *Eastland,* 141 F. Supp. 729 (D.D.C. 1956). There a three-judge district court affirmed its jurisdiction to pass upon the merits of a complaint seeking to enjoin the Public Printer and the Superintendent of Documents from printing an allegedly false and defamatory Senate document pursuant to a Senate concurrent resolution. The complaint charged that the concurrent resolution violated plaintiff's constitutional rights. The court held by a two-

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* The Court held that the resolution did not authorize the investigation of defendant. The *Rumely* case was followed in the last Term in *Schneider* v. *Smith,* 390 U.S. 17, 26-27 (1968) (statute construed to avoid constitutional issue).

to-one majority that the complaint failed to state a claim on which relief could be granted. The dissenting judge set forth his reasoning on the merits at length, but as to the question of three-judge court jurisdiction, the existence of which was recognized by the majority, he said (141 F. Supp. at 736):

> "The defendants say, 'The Court lacks jurisdiction of the subject matter in that Senate Concurrent Resolution Numeral 62 is not an act of Congress within the meaning of 28 U.S.C. Secs. 2282, 2284.' It seems inconceivable that Congress would recognize the power of such a three-judge court as this to restrain 'the enforcement, operation, or execution of any act of Congress or order of any department or agency of the United States for repugnance to the Constitution', and exclude from its consideration a Senate Concurrent Resolution."

In *Bond* v. *Floyd,* 385 U.S. 116 (1966), the plaintiff sought declaratory and injunctive relief against the enforcement of a resolution of the Georgia House of Representatives excluding him from his seat therein, as violative of his First Amendment rights. Plaintiff's appeal from the adverse ruling by a statutory three-judge district court was accepted by this Court under Section 1253, without apparent controversy (385 U.S. at 126.)

The decision of the Court of Appeals for the District of Columbia in *Powell* v. *McCormack,* 395 F.2d 577 (D.C. Cir. 1968), petition for writ of certiorari pending No. 138, is inapplicable. The Court of Appeals there held that a resolution of the House of Representatives denying a congressman his seat was not an "Act of Congress" within the meaning of Section 2282 since "it creates no broad statutory scheme which would be frustrated by injunctive relief,

and it does not contain the attributes of the usual 'Act of Congress'." (395 F.2d at 603.)*

This holding is of course inapposite because this case unlike *Powell* involves not only a resolution but an enactment that is clearly an Act of Congress. See Section A, above. In any event, whatever the scope of the resolution in issue in the *Powell* case, many congressional resolutions have the effect of a "broad statutory scheme," as the one in the case at bar. See Corwin, ed. The Constitution of the United States of America, 104 (1952). Indeed, in their petition for rehearing *en banc* in the United States Court of Appeals for the Seventh Circuit, the Committee asserted and relied upon a claim that judicial consideration of appellants' challenge to Rule XI would have far-reaching and "disastrous" effects. (Petition, pp. 2-3, 11-12.)

Acting under its charter, the members of the Committee and their predecessors have held some 174 hearings and summoned over 3,000 witnesses. (Appendix 5, p. 10, Table 1.) These hearings have been held in at least 32 cities outside of the District of Columbia, and in many cities more than one hearing was held. Many citizens have been prosecuted criminally as a result of appearances before the Committee. The Committee has circulated millions of its publications. See Appendix 4, pp. 134-138. As alleged in the complaint the Committee has deliberately held hundreds of witnesses up to public obloquy at hearings and in its reports and public actions.

The statutory three-judge court is created for the protection of the Government and of the public. It is to pro-

* In *Powell,* the extensive majority and concurring opinions were principally directed to the propriety of judicial review over rules and acts of the House of Representatives respecting its own membership.

vide for a three-judge rather than a single-judge court so as to bring to bear in these normally far-reaching and all important cases the combined judgment of one Circuit and two District Judges rather than a single District Judge. No transitory tactical purpose can justify the assertion that this protective device applies to resolutions of state legislatures but does not apply to far-reaching resolutions of the national legislature of the character under attack in this case. If Congress required in Section 2282 that a three-judge court must pass upon the constitutionality of (for example) an enactment for a federal dam project, it surely intended the protection of a three-judge court to determine the validity of a rule or resolution directly affecting the Congress itself and affecting the rights, privileges and immunities of citizens. (See *Oklahoma ex rel. Phillips* v. *Guy F. Atkinson Co.*, 37 F. Supp. 93 (E.D. Okla. 1941), affd. 313 U.S. 508 (1941).)

II.

THE GROUNDS FOR AFFIRMANCE ADVANCED BY APPELLEES WERE UNANIMOUSLY AND CORRECTLY REJECTED BY THE COURT BELOW.

Appellees have shown scant interest in supporting the judgment appealed from on the ground relied on by the majority of the court below, *viz.*, the Speech or Debate Clause. Rather, appellees have shifted in this Court to a host of grounds for affirmance which are not even mentioned in the opinion of the court below, and indeed which were tendered to and rejected by the Court of Appeals for the Seventh Circuit and by all members of the three-judge court. (See Motion to Dismiss or Affirm, p. 18.)

The various grounds for affirmance urged by the Solicitor will be found in the briefs filed with the Court of Appeals in support of Judge Hoffman's original dismissal of the

complaints, and with the three-judge court in support of appellees' renewed motions to dismiss the complaints following the Court of Appeals' reversal.

The court below *unanimously* denied appellees' motions to dismiss, and directed appellees to answer the complaints. (4 R. 52, Nov. 8, 1967). The brief discussion of these contentions which follows is submitted in the event this Court deems that they are properly raised at this time.

MOOTNESS

[Motion to Dismiss or Affirm, p. 13.]

The Committee first argued that this case was moot in August, 1965, in a motion to dismiss appellants' first appeal to the Court of Appeals. (Filed August 19, 1965, p. 4.) The claim was renewed in the Court of Appeals on the ground that the hearings had been held. (Appellees' Brief, No. 15268-9, pp. 20-21). In their petition for rehearing *en banc* to the Court of Appeals, the Committee argued the case was moot because the House of Resolutions had adopted contempt resolutions. (Petition, pp. 31-34). Appellees argued to the three-judge court that the return of indictments against appellees rendered the case moot. (Appellees' Memorandum in Support of Motion to Dismiss, pp. 12-16.)

All of these contentions were rejected by all of the judges who sat on the case.

This case is far from moot. Appellants are under indictment and face imminent prosecution. They ask the court to enter a judgment declaring the Committee's enabling Act to be unconstitutional, and that the May, 1965 hearings and the subpoenaes served on appellants were invalid, and to enjoin further operation and enforcement of that Act and further prosecution of the criminal cases against appellants.

STANDING

[Motion to Dismiss or Affirm, p. 18.]

This argument also has been repeatedly advanced by appellees*, but with no greater acceptance than the others discussed in this part.

It borders on the ludicrous to urge that appellants lack standing. They have been singled out for compulsory appearance before the Committee, and as a direct result they stand indicted for a federal crime. They have intense, concrete, personal interest in the outcome, and adequately represent all other citizens similarly situated. Of their standing to maintain this action there can be no doubt. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 140-141 (1951); *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, 284 (1961); *Baker* v. *Carr,* 369 U.S. 186, 208 (1962); *Flast* v. *Cohen,* 392 U.S. 83, 99-103 (1968).

ADEQUATE REMEDY IN DEFENSE OF CRIMINAL CASES.

[Motion to Dismiss or Affirm, pp. 13-16]

This argument** too has been rejected by the Court of Appeals and by the three-judge court.

One of the primary purposes of these cases is to obtain adjudication of appellants' constitutional claims in a civil rather than a criminal forum, in order to avoid the obloquy of a criminal trial and in order to secure a judgment which will have precedential value rather than a jury verdict of guilty or not guilty.

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* Appellees' Brief, No. 15268-9, pp. 22-23; Appellees' Petition for Rehearing en Banc, pp. 23-26; Appellees' Memorandum in Support of Motion to Dismiss, pp. 17-22.

** Appellees' Brief, No. 15268-9, pp. 22, 27-31; Appellees' Petition for Rehearing en Banc, p. 27; Appellees' Memorandum in Support of Motion to Dismiss, pp. 38-42.

The Solicitor agrees that *Dombrowski v. Pfister*, 380 U.S. 479 (1965), sets forth special standards for equitable relief from criminal prosecutions in the area of First Amendment rights, and that the principles in that case apply to federal as well as to state statutes. Furthermore, the Solicitor concedes, as he must, that this case "involves allegations of a 'chilling effect' on appellants' and others' exercise of their First Amendment rights, and assertions that this effect is the result of an overbroad enactment uncontained by acceptable narrowing constructions."* (Motion to Dismiss or Affirm, p. 14.)

The Solicitor argues however that this case is distinguishable from *Dombrowski* and similar cases in "one crucial respect", that is, "the allegations of 'chill' entirely lack the personal concreteness" of past cases where defense of a criminal prosecution " 'will not assure adequate vindication of constitutional rights' . . ." (Motion to Dismiss or Affirm, p. 14.)

This contention ignores the allegations of appellants' complaint, *which stand admitted* at this phase of the case. It is hard to imagine allegations which more directly involve:

1. Personal, concrete, adverse impact of a statute upon appellants.

2. Personal, concrete, adverse impact of a statute upon other citizens similarly situated.

3. The existence of a far reaching chilling effect impairing and restricting the exercise of First Amendment

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*Appellants also contend that subsequent narrowing construction would not cure the Act. *Whitehill* v. *Elkins*, 389 U.S. 54 (1967); Jurisdictional Statement of Appellants Stamler and Hall, pp. 39-40.

rights throughout the society at large.* (See Jurisdictional Statement of Appellants Stamler and Hall, pp. 18-20.)

At this juncture, appellants' need for equitable relief must be determined on the basis of the allegations of their complaints. Whether or not appellants will establish facts which bring this case within the principles of *Dombrowski* and similar cases must, of course, await the trial.

SEPARATION OF POWERS

[Motion to Dismiss or Affirm, pp. 6-19.]

In making this contention, appellees cite the same cases as they have throughout this case.** Not one of the many judges who have considered this case has accepted this argument.

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* Contrary to the appellees' statement, the factual circumstances in *Dombrowski* are extremely close to the facts presented in the case at bar:

(i) Here, as in *Dombrowski*, at the time of the filing of the complaints, there were no indictments pending against appellants.

(ii) Here, as in *Dombrowski*, appellants were threatened with criminal prosecution when the second complaint was filed.

(iii) Here, as in *Dombrowski*, criminal indictments were instituted against the appellants during the pendency of the civil case.

(iv) Here, as in *Dombrowski*, the appellants alleged that the statute was being applied in bad faith to deter the free exercise of First Amendment rights and not to obtain valid convictions.

(v) Here, as in *Dombrowski*, the appellants challenge the facial constitutionality of a statute operating in the area of the First Amendment rights.

(vi) Here, as in *Dombrowski*, success in defense of a criminal prosecution will not vindicate and protect the First Amendment rights of appellants and others threatened and inhibited by the statute.

** *Fischler* v. *McCarthy*, 117 F. Supp. 643 (S.D.N.Y. 1954), affirmed on other grounds, 218 F.2d 164 (2d Cir. 1954); *Pauling* v. *Eastland*, 288 F.2d 126 (D.C. Cir. 1960), cert. denied 364 U.S. 900; *Methodist Federation* v. *Eastland*, 141 F.Supp. 729 (D.D.C. (1956). Appellees' Brief, No. 15268-9, pp. 33-38; Appellees' Petition for Rehearing en Banc, pp. 10-15; Appellees' Memorandum in Support of Motion to Dismiss, pp. 42-49.

Appellants do not seek to interfere with the internal operations of Congress. Rather, they seek relief from an unconstitutional Act of Congress. The court's power to adjudicate this issue and award appropriate relief is beyond question. *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 177-78 (1803); *Kilbourn* v. *Thompson,* 103 U.S. 168, 199 (1880).

Nor can there be any doubt that the United States Constitution limits the activities of federal congressional investigating committees, and that the courts have authority to rule upon the legality of committee procedures. See, e.g., *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880); *Yellin* v. *United States,* 374 U.S. 109 (1963); *Gojack* v. *United States,* 384 U.S. 702 (1966); *Watkins* v. *United States,* 354 U.S. 178 (1957).

JUSTICIABILITY

[Motion to Dismiss or Affirm, pp. 18, 20-21.]

The justiciability of this case cannot be seriously questioned.* There is presented here a "substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. . . ." *Evers* v. *Dwyer,* 358 U.S. 202, 203-4 (1958). There is nothing abstract about appellants' challenge to the Committee's charter or to their prayer for declaratory and injunctive relief concerning the charter and the pending criminal prosecutions.

Appellees argue that in the future the House of Rrepresentatives may repeal the Committee's authorization, and that the Committee's membership and procedures may change. (Motion, p. 18.) This speculation—which is in the teeth of 22 years of unhappy experience—does not

* Appellees' Brief, No. 15268-9, pp. 22-23; Appellees' Petition for Rehearing en Banc, pp. 26-29; Appellees' Memorandum in Support of Motion to Dismiss, pp. 19-22.

meet the issue. Every Act of Congress may be repealed or amended, or its mode of enforcement changed, but those possibilities do not prevent courts from adjudicating rights under those Acts or their constitutionality. See *Marbury v. Madison,* 5 U.S. (1 Cranch) 137 (1803).

CONCLUSION.

Appellees have written off the reasoning of the majority of the court below. They assert instead objections to this Court's direct appellate jurisdiction and defenses to the complaint, all of which were rejected by both the three-judge court and the Court of Appeals.

Appellants pray that the Court reverse the judgment below.

Respectfully submitted,

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APPENDIX

APPENDIX A

LEGISLATIVE REORGANIZATION ACT OF 1946

[Title I and Title II]

CHAPTER 753—PUBLIC LAW 601

[S. 2177]

An Act to provide for increased efficiency in the legislative branch of the Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SHORT TITLE

(a) This Act, divided into titles and sections according to the following table of contents, may be cited as the "Legislative Reorganization Act of 1946":

TABLE OF CONTENTS

TITLE I—CHANGES IN RULES OF SENATE AND HOUSE

Sec. 101. Rule-making power of the Senate and House.

PART 1—STANDING RULES OF THE SENATE

Sec. 102. Standing committees of the Senate.
Committee on Agriculture and Forestry.
Committee on Appropriations.
Committee on Armed Services.
Committee on Banking and Currency.
Committee on Civil Service.
Committee on the District of Columbia.
Committee on Expenditures in the Executive Departments.

Committee on Finance.
Committee on Foreign Relations.
Committee on Interstate and Foreign Commerce.
Committee on the Judiciary.
Committee on Public Lands.
Committee on Public Works.
Committee on Rules and Administration.

Sec. 103. Appropriations.

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

Sec. 121. Standing committees of the House of Representatives.

Committee on Agriculture.
Committee on Appropriations.
Committee on Armed Services.
Committee on Banking and Currency.
Committee on Post Office and Civil Service.
Committee on the District of Columbia.
Committee on Education and Labor.
Committee on Expenditures in the Executive Departments.
Committee on Foreign Affairs.
Committee on House Administration.
Committee on Interstate and Foreign Commerce.
Committee on the Judiciary.
Committee on Merchant Marine and Fisheries.
Committee on Public Lands.
Committee on Public Works.
Committee on Rules.
Committee on Un-American Activities.
Committee on Veterans' Affairs.
Committee on Ways and Means.

Sec. 122. Delegates and Resident Commissioner.
Sec. 123. Reference of Private Claims Bills.

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Sec. 131. Private bills banned.
Sec. 132. Congressional adjournment.
Sec. 133. Committee procedure.
Sec. 134. Committee powers.
Sec. 135. Conference rules on amendments in nature of substitute.
Sec. 136. Legislative oversight by standing committees.
Sec. 137. Decisions on questions of committee jurisdiction.
Sec. 138. Legislative Budget.
Sec. 139. Hearings and reports by Appropriations Committees.
Sec. 140. Records of Congress.
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Sec. 142. Effective date.

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Sec. 201. Increase in compensation for certain Congressional officers.
Sec. 202. Committee staffs.
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Sec. 207. Correction of Military and Naval Records.

PART 2—STATUTORY PROVISIONS RELATING TO COMMITTEES OF CONGRESS

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Sec. 223. Joint Committee on the Library.
Sec. 224. Transfer of functions.
Sec. 225. Joint Committee on the Economic Report.
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PART 3—Provisions Relating To Capitol And Pages

Sec. 241. Remodeling of caucus rooms and restaurants.
Sec. 242. Assignment of Capitol space.
Sec. 243. Senate and House pages.
Sec. 244. Authorization of appropriations and personnel.
Sec. 245. Effective date.

TITLE III—REGULATION OF LOBBYING ACT

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Detailed accounts of contributions.
Sec. 304. Receipts for contributions.
Sec. 305. Statements to be filed with Clerk of House.
Sec. 306. Statement preserved for two years.
Sec. 307. Persons to whom applicable.
Sec. 308. Registration with Secretary of the Senate and Clerk of the House.
Sec. 309. Reports and statements to be made under oath.
Sec. 310. Penalties.
Sec. 311. Exemption.

TITLE IV—FEDERAL TORT CLAIMS ACT

PART 1—Short Title And Definitions

Sec. 401. Short title.
Sec. 402. Definitions.

PART 2—ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS AGAINST THE UNITED STATES

Sec. 403. Claims of $1,000 or less.
Sec. 404. Reports.

PART 3—SUITS ON TORT CLAIMS AGAINST THE UNITED STATES

Sec. 410. Jurisdiction.
Sec. 411. Procedure.
Sec. 412. Review.
Sec. 413. Compromise.

PART 4—PROVISIONS COMMON TO PART 2 AND PART 3

Sec. 420. One year statute of limitations.
Sec. 421. Exceptions.
Sec. 422. Attorneys' fees.
Sec. 423. Exclusiveness of remedy.
Sec. 424. Certain statutes inapplicable.

TITLE V—GENERAL BRIDGE ACT

Sec. 501. Short title.
Sec. 502. Consent of Congress.
Sec. 503. Tolls.
Sec. 504. Acquisition by public agencies.
Sec. 505. Statements of cost.
Sec. 506. Sinking fund.
Sec. 507. Applicability of title.
Sec. 508. International bridges.
Sec. 509. Eminent domain.
Sec. 510. Penalties.
Sec. 511. Rights reserved.

TITLE VI—COMPENSATION AND RETIREMENT PAY OF MEMBERS OF CONGRESS

Sec. 601. Compensation of Members of Congress.
Sec. 602. Retirement pay of Members of Congress.

SEPARABILITY CLAUSE

(b) If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE I—CHANGES IN RULES OF SENATE AND HOUSE

Rule-Making Power Of The Senate And House

Sec. 101. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

PART 1—Standing Rules of the Senate

STANDING COMMITTEES OF THE SENATE

Sec. 102. Rule XXV of the Standing Rules of the Senate is amended to read as follows:

"Rule XXV

"STANDING COMMITTEES

"(1) The following standing committees shall be appointed at the commencement of each Congress, with leave to report by bill or otherwise:

"(a) Committee on Agriculture and Forestry, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Agriculture generally.

"2. Inspection of livestock and meat products.

"3. Animal industry and diseases of animals.

"4. Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

"5. Agricultural colleges and experiment stations.

"6. Forestry in general, and forest reserves other than those created from the public domain.

"7. Agricultural economics and research.

"8. Agricultural and industrial chemistry.

"9. Dairy industry.

"10. Entomology and plant quarantine.

"11. Human nutrition and home economics.

"12. Plant industry, soils, and agricultural engineering.

"13. Agricultural educational extension services.

"14. Extension of farm credit and farm security.

"15. Rural electrification.

"16. Agricultural production and marketing and stabilization of prices of agricultural products.

"17. Crop insurance and soil conservation.

"(b) Committee on Appropriations, to consist of twenty-one Senators, to which committee shall be referred

all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Appropriation of the revenue for the support of the Government.

"(c) Committee on Armed Services, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Common defense generally.

"2. The War Department and the Military Establishment generally.

"3. The Navy Department and the Naval Establishment generally.

"4. Soldiers' and sailors' homes.

"5. Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

"6. Selective service.

"7. Size and composition of the Army and Navy.

"8. Forts, arsenals, military reservations, and navy yards.

"9. Ammunition depots.

"10. Maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone.

"11. Conservation, development, and use of naval petroleum and oil shale reserves.

"12. Strategic and critical materials necessary for the common defense.

"(d) Committee on Banking and Currency, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Banking and currency generally.

"2. Financial aid to commerce and industry, other than matters relating to such aid which are specifically assigned to other committees under this rule.

"3. Deposit insurance.

"4. Public and private housing.

"5. Federal Reserve System.

"6. Gold and silver; including the coinage thereof.

"7. Issuance of notes and redemption thereof.

"8. Valuation and revaluation of the dollar.

"9. Control of prices of commodities, rents, or services.

"(e) Committee on Civil Service, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. The Federal civil service generally.

"2. The status of officers and employees of the United States, including their compensation, classification, and retirement.

"3. The postal service generally, including the railway mail service, and measures relating to ocean mail and pneumatic-tube service; but excluding post roads.

"4. Postal-savings banks.

"5. Census and the collection of statistics generally.

"6. The National Archives.

"(f) Committee on the District of Columbia, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. All measures relating to the municipal affairs of the District of Columbia in general, other than appropriations therefor, including—

"2. Public health and safety, sanitation, and quarantine regulations.

"3. Regulation of sale of intoxicating liquors.

"4. Adulteration of food and drugs.

"5. Taxes and tax sales.

"6. Insurance, executors, administrators, wills, and divorce.

"7. Municipal and juvenile courts.

"8. Incorporation and organization of socities.

"9. Municipal code and amendments to the criminal and corporation laws.

"(g) (1) Committee on Expenditures in the Executive Departments, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) Budget and accounting measures, other than appropriations.

"(B) Reorganizations in the executive branch of the Government.

"(2) Such committee shall have the duty of—

"(A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

"(B) studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

"(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

"(D) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

"(h) Committee on Finance, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Revenue measures generally.

"2. The bonded debt of the United States.

"3. The deposit of public moneys.

"4. Customs, collection districts, and ports of entry and delivery.

"5. Reciprocal trade agreements.

"6. Transportation of dutiable goods.

"7. Revenue measures relating to the insular possessions.

"8. Tariffs and import quotas, and matters related thereto.

"9. National social security.

"10. Veterans' measures generally.

"11. Pensions of all the wars of the United States, general and special.

"12. Life insurance issued by the Government on account of service in the armed forces.

"13. Compensation of veterans.

"(i) Committee on Foreign Relations, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Relations of the United States with foreign nations generally.

"2. Treaties.

"3. Establishment of boundary lines between the United States and foreign nations.

"4. Protection of American citizens abroad and expatriation.

"5. Neutrality.

"6. International conferences and congresses.

"7. The American National Red Cross.

"8. Intervention abroad and declarations of war.

"9. Measures relating to the diplomatic service.

"10. Acquisitions of land and buildings for embassies and legations in foreign countries.

"11. Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

"12. United Nations Organization and international financial and monetary organizations.

"13. Foreign loans.

"(j) Committee on Interstate and Foreign Commerce, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Interstate and foreign commerce generally.

"2. Regulation of interstate railroads, busses, trucks, and pipe lines.

"3. Communication by telephone, telegraph, radio, and television.

"4. Civil aeronautics.

"5. Merchant marine generally.

"6. Registering and licensing of vessels and small boats.

"7. Navigation and the laws relating thereto, including pilotage.

"8. Rules and international arrangements to prevent collisions at sea.

"9. Merchant marine officers and seamen.

"10. Measures relating to the regulation of common carriers by water and to the inspection of merchant vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

"11. Coast and Geodetic Survey.

"12. The Coast Guard, including life-saving service, lighthouses, lightships, and ocean derelicts.

"13. The United States Coast Guard and Merchant Marine Academies.

"14. Weather Bureau.

"15. Except as provided in paragraph (c), the Panama Canal and interoceanic canals generally.

"16. Inland waterways.

"17. Fisheries and wildlife, including research, restoration, refuges and conservation.

"18. Bureau of Standards including standardization of weights and measures and the metric system.

"(k) Committee on the Judiciary, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Judicial proceedings, civil and criminal, generally.

"2. Constitutional amendments.

"3. Federal courts and judges.

"4. Local courts in the Territories and possessions.

"5. Revision and codification of the statutes of the United States.

"6. National penitentiaries.

"7. Protection of trade and commerce against unlawful restraints and monopolies.

"8. Holidays and celebrations.

"9. Bankruptcy, mutiny, espionage, and counterfeiting.

"10. State and Territorial boundary lines.

"11. Meetings of Congress, attendance of Members, and their acceptance of incompatible offices.

"12. Civil liberties.

"13. Patents, copyrights, and trade-marks.

"14. Patent Office.

"15. Immigration and naturalization.

"16. Apportionment of Representatives.

"17. Measures relating to claims against the United States.

"18. Interstate compacts generally.

"(*l*) Committee on Labor and Public Welfare, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Measures relating to education, labor, or public welfare generally.

"2. Mediation and arbitration of labor disputes.

"3. Wages and hours of labor.

"4. Convict labor and the entry of goods made by convicts into interstate commerce.

"5. Regulation or prevention of importation of foreign laborers under contract.

"6. Child labor.

"7. Labor statistics.

"8. Labor standards.

"9. School-lunch program.

"10. Vocational rehabilitation.

"11. Railroad labor and railroad retirement and unemployment, except revenue measures relating thereto.

"12. United States Employees' Compensation Commission.

"13. Columbia Institution for the Deaf, Dumb, and Blind; Howard University; Freedmen's Hospital; and Saint Elizabeth's Hospital.

"14. Public health and quarantine.

"15. Welfare of miners.

"16. Vocational rehabilitation and education of veterans.

"17. Veterans' hospitals, medical care and treatment of veterans.

"18. Soldiers' and sailors' civil relief.

"19. Readjustment of servicemen to civil life.

"(m) Committee on Public Lands, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Public lands generally, including entry, easements, and grazing thereon.

"2. Mineral resources of the public lands.

"3. Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

"4. Forest reserves and national parks created from the public domain.

"5. Military parks and battlefields, and national cemeteries.

"6. Preservation of prehistoric ruins and objects of interest on the public domain.

"7. Measures relating generally to Hawaii, Alaska, and the insular possessions of the United States, except those affecting their revenue and appropriations.

"8. Irrigation and reclamation, including water supply for reclamation projects, and easements of public lands for irrigation projects.

"9. Interstate compacts relating to apportionment of waters for irrigation purposes.

"10. Mining interests generally.

"11. Mineral land laws and claims and entries thereunder.

"12. Geological survey.

"13. Mining schools and experimental stations.

"14. Petroleum conservation and conservation of the radium supply in the United States.

"15. Relations of the United States with the Indians and the Indian tribes.

"16. Measures relating to the care, education, and management of Indians, including the care and allotment of Indian lands and general and special measures relating to claims which are paid out of Indian funds.

"(n) The Committee on Public Works, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials and other matters relating to the following subjects:

"1. Flood control and improvement of rivers and harbors.

"2. Public works for the benefit of navigation, and bridges and dams (other than international bridges and dams).

"3. Water power.

"4. Oil and other pollution of navigable waters.

"5. Public buildings and occupied or improved grounds of the United States generally.

"6. Measures relating to the purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

"7. Measures relating to the Capitol building and the Senate and House Office Buildings.

"8. Measures relating to the construction or reconstruction, maintenance, and care of the buildings and grounds of the Botanic Gardens, the Library of Congress, and the Smithsonian Institution.

"9. Public reservations and parks within the District of Columbia, including Rock Creek Park and the Zoological Park.

"10. Measures relating to the construction or maintenance of roads and post roads.

"(*o*) (1) Committee on Rules and Administration, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) Matters relating to the payment of money out of the contingent fund of the Senate or creating a charge upon the same; except that any resolution relating to substantive matter within the jurisdiction of any other standing committee of the Senate shall be first referred to such committee.

"(B) Except as provided in paragraph (n) 8, matters relating to the Library of Congress and the Senate Li-

brary; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Gardens; management of the Library of Congress; purchase of books and manuscripts; erection of monuments to the memory of individuals.

"(C) Except as provided in paragraph (n) 8, matters relating to the Smithsonian Institution and the incorporation of similar institutions.

"(D) Matters relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; Federal elections generally; Presidential succession.

"(E) Matters relating to parliamentary rules; floor and gallery rules; Senate Restaurant; administration of the Senate Office Building and of the Senate Wing of the Capitol; assignment of office space; and services to the Senate.

"(F) Matters relating to printing and correction of the Congressional Record.

"(2) Such committee shall also have the duty of examining all bills, amendments, and joint resolutions after passage by the Senate; and, in cooperation with the Committee on House Administration of the House of Representatives, of examining all bills and joint resolutions which shall have passed both Houses, to see that the same are correctly enrolled; and when signed by the Speaker of the House and the President of the Senate, shall forthwith present the same, when they shall have originated in the Senate, to the President of the United States in person, and report the fact and date of such presentation to the Senate. Such committee shall also have the duty of assigning office space in the Senate Wing of the Capitol and in the Senate Office Building.

"(3) Each standing committee shall continue and have the power to act until their successors are appointed.

"(3) Each standing committee is authorized to fix the number of its members (but not less than one-third of its entire membership) who shall constitute a quorum thereof for the transaction of such business as may be considered by said committee, subject to the provisions of section 133 (d) of the Legislative Reorganization Act of 1946.

"(4) Each Senator shall serve on two standing committees and no more; except that Senators of the majority party who are members of the Committee on the District of Columbia or of the Committee on Expenditures in the Executive Departments may serve on three standing committees and no more."

APPROPRIATIONS

Sec. 103. Rule XVI of the Standing Rules of the Senate is amended to read as follows:

"RULE XVI

"AMENDMENTS TO APPROPRIATION BILLS

"1. All general appropriation bills shall be referred to the Committee on Appropriations, and no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or treaty stipulation, or Act, or resolution previously passed by the Senate during that session; or unless the same be moved by direction of a standing or select committee of the Senate, or proposed in pursuance of an estimate submitted in accordance with law.

"2. The Committee on Appropriations shall not report an appropriation bill containing amendments proposing

new or general legislation or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a contingency, and if an appropriation bill is reported to the Senate containing amendments proposing new or general legislation or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations.

"3. All amendments to general appropriation bills moved by direction of a standing or select committee of the Senate, proposing to increase an appropriation already contained in the bill, or to add new items of appropriation, shall, at least one day before they are considered, be referred to the Committee on Appropriations, and when actually proposed to the bill no amendment proposing to increase the amount stated in such amendment shall be received; in like mananer, amendments proposing new items of appropriation to river and harbor bills, establishing post roads, or proposing new post roads, shall, before being considered, be referred to the Committee on Public Works.

"4. No amendment which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule,

when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

"5. No amendment, the object of which is to provide for a private claim, shall be received to any general appropriation bill, unless it be to carry out the provisions of an existing law or a treaty stipulation, which shall be cited on the face of the amendment.

"6. (a) Three members of the following-named committees, to be selected by their respective committees, shall be ex officio members of the Committee on Appropriations, to serve on said committee when the aannual appropriation bill making appropriations for the purposes specified in the following table opposite the name of the committee is being considered by the Committee on Appropriations:

Name of Committee	Purpose of Appropriation
Committee on Agriculture and Forestry	For the Department of Agriculture.
Committee on Civil Service	For the Post Office Department.
Committee on Armed Services	For the Department of War; for the Department of the Navy.
Committee on the District of Columbia	For the District of Columbia.
Committee on Public Works	For Rivers and Harbors.
Committee on Foreign Relations	For the Diplomatic and Consular Service.

"(b) At least one member of each committee enumerated in subparagraph (a), to be selected by his or their

respective committees, shall be a member of any conference committee appointed to confer with the House upon the annual appropriation bill making appropriations for the purposes specified in the foregoing table opposite the name of his or their respective committee.

"7. When a point of order is made against any restriction on the expenditure of funds appropriated in a general appropriation bill on the ground that the restriction violates this rule, the rule shall be construed strictly and, in case of doubt, in favor of the point of order."

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES

Sec. 121. (a) Rule X of the Rules of the House of Representatives is amended to read as follows:

"RULE X

"STANDING COMMITTEES

"(a) There shall be elected by the House, at the commencement of each Congress, the following standing committees:

"1. Committee on Agriculture, to consist of twenty-seven Members.

"2. Committee on Appropriations, to consist of forty-three Members.

"3. Committee on Armed Services, to consist of thirty-three Members.

"4. Committee on Banking and Currency, to consist of twenty-seven Members.

"5. Committee on Post Office and Civil Service, to consist of twenty-five Members.

"6. Committee on the District of Columbia, to consist of twenty-five Members.

"7. Committee on Education and Labor, to consist of twenty-five Members.

"8. Committee on Expenditures in the Executive Departments, to consist of twenty-five Members.

"9. Committee on Foreign Affairs, to consist of twenty-five Members.

"10. Committee on House Administration, to consist of twenty-five Members.

"11. Committee on Interstate and Foreign Commerce, to consist of twenty-seven Members.

"12. Committee on the Judiciary, to consist of twenty-seven Members.

"13. Committee on Merchant Marine and Fisheries, to consist of twenty-five Members.

"14. Committee on Public Lands, to consist of twenty-five Members.

"15. Committee on Public Works, to consist of twenty-seven Members.

"16. Committee on Rules, to consist of twelve Members.

"17. Committee on Un-American Activities, to consist of nine Members.

"18. Committee on Veterans' Affairs, to consist of twenty-seven Members.

"19. Committee on Ways and Means, to consist of twenty-five Members.

"(b) (1) The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.

"(2) At the commencement of each Congress, the House shall elect as chairman of each standing committee one of the Members thereof; in the temporary absence of the chairman, the Member next in rank in the order named in the election of the committee, and so on, as often as the case shall happen, shall act as chairman; and in case of a permanent vacancy in the chairmanship of any such committee the House shall elect another chairman.

"(3) All vacancies in standing committees in the House shall be filled by election by the House. Each Member shall be elected to serve on one standing committee and no more; except that Members who are elected to serve on the Committee on the District of Columbia or on the Committee on Un-American Activities may be elected to serve on two standing committees and no more, and Members of the majority party who are elected to serve on the Committee on Expenditures in the Executive Departments or on the Committee on House Administration may be elected to serve on two standing committees and no more."

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"POWER AND DUTIES OF COMMITTEES

"(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively: *Provided,* That unless otherwise provided herein, any matter within the jurisdiction of a standing committee prior to January 2, 1947, shall remain subject to the jurisdiction of that committee or of the consolidated committee succeeding generally to the jurisdiction of that committee.

"(a) Committee on Agriculture.

"1. Agriculture generally.

"2. Inspection of livestock and meat products.

"3. Animal industry and diseases of animals.

"4. Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

"5. Agricultural colleges and experiment stations.

"6. Forestry in general, and forest reserves other than those created from the public domain.

"7. Agricultural economics and research.

"8. Agricultural and industrial chemistry.

"9. Dairy industry.

"10. Entomology and plant quarantine.

"11. Human nutrition and home economics.

"12. Plant industry, soils, and agricultural engineering.

"13. Agricultural educational extension services.

"14. Extension of farm credit and farm security.

"15. Rural electrification.

"16. Agricultural production and marketing and stabilization of prices of agricultural products.

"17. Crop insurance and soil conservation.

"(b) Committee on Appropriations.

"1. Appropriation of the revenue for the support of the Government.

"(c) Committee on Armed Services.

"1. Common defense generally.

"2. The War Department and the Military Establishment generally.

"3. The Navy Department and the Naval Establishment generally.

"4. Soldiers' and Sailors' homes.

"5. Pay, promotion, retirement, and other benefits and priveleges of members of the armed forces.

"6. Selective service.

"7. Size and composition of the Army and Navy.

"8. Forts, arsenals, military reservations, and navy yards.

"9. Ammunition depots.

"10. Conservation, development, and use of naval petroleum and oil shale reserves.

"11. Strategic and critical materials necessary for the common defense.

"12. Scientific research and development in support of the armed services.

"(d) Committee on Banking and Currency.

"1. Banking and currency generally.

"2. Financial aid to commerce and industry, other than matters relating to such aid which are specifically assigned to other committees under this rule.

"3. Deposit insurance.

"4. Public and private housing.

"5. Federal Reserve System .

"6. Gold and silver, including the coinage thereof.

"7. Issuance of notes and redemption thereof.

"8. Valuation and revaluation of the dollar.

"9. Control of prices of commodities, rents, or services.

(e) Committee on Post Office and Civil Service.

"1. The Federal civil service generally.

"2. The status of officers and employees of the United States, including their compensation, classification, and retirement.

"3. The postal service generally, including the railway mail service, and measures relating to ocean mail and pneumatic-tube service; but excluding post roads.

"4. Postal-savings banks.

"5. Census and the collection of statistics generally.

"6. The National Archives.

"(f) Committee on the District of Columbia.

"1. All measures relating to the municipal affairs of the District of Columbia in general, other than appropriations therefor, including—

"2. Public health and safety, sanitation, and quarantine regulations.

"3. Regulation of sale of intoxicating liquors.

"4. Adulteration of food and drugs.

"5. Taxes and tax sales.

"6. Insurance, executors, administrators, wills, and divorce.

"7. Municipal and juvenile courts.

"8. Incorporation and organization of societies.

"9. Municipal code and amendments to the criminal and corporation laws.

"(g) Committee on Education and Labor.

"1. Measures relating to education or labor generally.

"2. Mediation and arbitration of labor disputes.

"3. Wages and hours of labor.

"4. Convict labor and the entry of goods made by convicts into interstate commerce.

"6. Child labor.

"7. Labor statistics.

"8. Labor standards.

"9. School-lunch program.

"10. Vocational rehabilitation.

"11. United States Employees' Compensation Commisison.

"12. Columbia Institution for the Deaf, Dumb, and Blind; Howard University; Freedmen's Hospital; and Saint Elizabeths Hospital.

"13. Welfare of miners.

"(h) (1) Committee on Expenditures in the Executive Departments.

"(A) Budget and accounting measures, other than appropriations.

"(B) Reorganizations in the executive branch of the Government.

"(2) Such committee shall have the duty of—

"(A) receiving and examining reports of the Comptroller General of the United States and of slub-

mitting such recommendations to the House as it deems necessary or desirable in connection with the subject matter of such reports;

"(B) studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

"(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

"(D) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

"(i) Committee on Foreign Affairs.

"1. Relations of the United States with foreign nations generally.

"2. Establishment of boundary lines between the United States and foreign nations.

"3. Protection of American citizens abroad and expatriation.

"4. Neutrality.

"5. International conferences and congresses.

"6. The American National Red Cross.

"7. Intervention aroad and declarations of war.

"8. Measures relating to the diplomatic service.

"9. Acquisition of land and buildings for embassies and legations in foreign countries.

"10. Measures to foster commerical intercourse with foreign nations and to safeguard American business interests abroad.

"11. United Nations Organization and international financial and monetary organizations.

"12. Foreign loans.

"(j) (1) Committee on House Administration.

"(A) Employment of persons by the House, including clerks for Members and committees, and reporters of debates.

"(B) Expenditure of the contingent fund of the House.

"(C) The auditing and settling of all accounts which may be charged to the contingent fund.

"(D) Measures relating to accounts of the House generally.

"(E) Appropriations from the contingent fund.

"(F) Measures relating to services to the House, including the House Restaurant and administration of the House Office Buildings and of the House wing of the Capitol.

"(G) Measures relating to the travel of Members of the House.

"(H) Measures relating to the assignment of office space for Members and committees.

"(I) Measures relating to the disposition of useless executive papers.

"(J) Except as provided in paragraph (*o*) 8, matters relating to the Library of Congress and the House Library; statuary and pictures; acceptance or purchase of works of

art for the Capitol; the Botanic Gardens; management of the Library of Congress; purchase of books and manuscripts; erection of monuments to the memory of individuals.

"(K) Except as provided in paragraph (*o*) 8, matters relating to the Smithsonian Institution and the incorporation of similar institutions.

"(L) Matters relating to printing and correction of the Congressional Record.

"(M) Measures relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

"(2) Such committee shall also have the duty of—

"(A) examining all bills, amendments, and joint resolution after passage by the House; and in cooperation with the Senate Committee on Rules and Administration, of examining all bills and joint resolutions which shall have passed both Houses, to see that they are correctly enrolled; and when signed by the Speaker of the House and the President of the Senate, shall forthwith present the same, when they shall have originated in the House, to the President of the United States in person, and report the fact and date of such presentation to the House;

"(B) reporting to the Sergeant at Arms of the House the travel of Members of the House;

"(C) arranging a suitable program for each day observed by the House of Representatives as a memorial day in memory of Members of the Senate and House of Representatives who have died during the preceding period, and to arrange for the publication of the proceedings thereof.

"(k) Committee on Interstate and Foreign Commerce.

"1. Interstate and foreign commerce generally.

"2. Regulation of interstate and foreign transportation, except transportation by water not subject to the jurisdiction of the Interstate Commerce Commission.

"3. Regulation of interstate and foreign communications.

"4. Civil aeronautics.

"5. Weather bureau.

"6. Interstate oil compacts; and petroleum and natural gas, except on the public lands.

"7. Securities and exchanges.

"8. Regulation of interstate transmission of power, except the installations of connections between Government water power projects.

"9. Railroad labor and railroad retirement and unemployment, except revenue measures relating thereto.

"10. Public health and quarantine.

"11. Inland waterways.

"12. Bureau of Standards, standardization of weights and measures, and the metric system.

"(*l*) Committee on the Judiciary.

"1. Judicial proceedings, civil and criminal, generally.

"2. Constitutional amendments.

"3. Federal courts and judges.

"4. Local courts in the Territories and possessions.

"5. Revision and codification of the statutes of the United States.

"6. National penitentiaries.

"7. Protection of trade and commerce against unlawful restraints and monopolies.

"8. Holidays and celebrations.

"9. Bankruptcy, mutiny, espionage, and counterfeiting.

"10. State and Territorial boundary lines.

"11. Meetings of Congress, attendance of Members, and their acceptance of incompatible offices.

"12. Civil liberties.

"13. Patents, copyrights, and trade-marks.

"14. Patent Office.

"15. Immigration and naturalization.

"16. Apportionment of Representatives.

"17. Measures relating to claims against the United States.

"18. Interstate compacts generally.

"19. Presidential succession.

"(m) Committee on Merchant Marine and Fisheries.

"1. Merchant marine generally.

"2. Registering and licensing of vessels and small boats.

"3. Navigation and the laws relating thereto, including pilotage.

"4. Rules and international arrangements to prevent collisions at sea.

"5. Merchant marine officers and seamen.

"6. Measures relating to the regulation of common carriers by water (except matters subject to the jurisdiction of the Interstate Commerce Commission) and to the inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

"7. The Coast Guard, including lifesaving service, lighthouses, lightships, and ocean derelicts.

"8. United States Coast Guard and Merchant Marine Academies.

"9. Coast and Geodetic Survey.

"10. The Panama Canal and the maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone; and interoceanic canals generally.

"11. Fisheries and wildlife, including research, restoration, refuges,and conservation.

"(n) Committee on Public Lands.

"1. Public lands generally, including entry, easements, and grazing thereon.

"2. Mineral resources of the public lands.

"3. Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

"4. Forest reserves and national parks created from the public domain.

"5. Military parks and battlefields, and national cemeteries.

"6. Preservation of prehistoric ruins and objects of interest on the public domain.

"7. Measures relating generally to Hawaii, Alaska, and the insular possessions of the United States, except those affecting the revenue and appropriations.

"8. Irrigation and reclamation, including water supply for reclamation projects, and easements of public lands for irrigation projects, and acquisition of private lands when necessary to complete irrigation projects.

"9. Interstate compacts relating to apportionment of waters for irrigation purposes.

"10. Mining interests generally.

"11. Mineral land laws and claims and entries thereunder.

"12. Geological survey.

"13. Mining schools and experimental stations.

"14. Petroleum conservation on the public lands and conservation of the radium supply in the United States.

"15. Relations of the United States with the Indians and the Indian tribes.

"16. Measures relating to the care, education, and management of Indians, including the care and allotment of Indian lands and general and special measures relating to claims which are paid out of Indian funds.

"(*o*) Committee on Public Works.

"1. Flood control and improvement of rivers and harbors.

"2. Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

"3. Water power.

"4. Oil and other pollution of navigable waters.

"5. Public buildings and occupied or improved grounds of the United States generally.

"6. Measures relating to the purchase of sites and construction of post offices, courthouses, Federal courthouses, and Government buildings within the District of Columbia.

"7. Measures relating to the Capitol Building and the Senate and House Office Buildings.

"8. Measures relating to the construction or reconstruction, maintenance, and care of the buildings and grounds of the Botonic Gardens, the Library of Congress and the Smithsonian Institution.

"9. Public reservations and parks within the District of Columbia, including Rock Creek Park and the Zoological Park.

"10. Measures relating to the construction or maintenance of roads and post roads, other than appropriations therefor; but it shall not be in order for any bill providing general legislation in relation to roads to contain any provision for any specific road, nor for any bill in relation to a specific road to embrace a provision in relation to any other specific road.

"(p) Committee on Rules.

"1. The rules, joint rules, and order of business of the House.

"2. Recesses and final adjournments of Congress.

"(q) (1) Committee on Un-American Activities.

"(A) Un-American activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time

to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

"(r) Committee on Veterans' Affairs.

"1. Veterans' measures generally.

"2. Pensions of all wars of the United States, general and special.

"3. Life insurance issued by the Government on account of service in the armed forces.

"4. Compensation, vocational rehabilitation, and education of veterans.

"5. Veterans' hospitals, medical care, and treatment of veterans.

"6. Soldiers' and sailors' civil relief.

"7. Readjustment of servicemen to civil life.

"(s.) Committee on Ways and Means.

"1. Revenue measures generally.

"2. The bonded debt of the United States.

"3. The deposit of public moneys.

"4. Customs, collection districts, and ports of entry and delivery.

"5. Reciprocal trade agreements.

"6. Transportation of dutiable goods.

"7. Revenue measures relating to the insular possessions.

"8. National social security.

"(2) (a) The following-named committees shall have leave to report at any time on the matters herein stated, namely: The Committee on Rules—on rules, joint rules, and order of business; the Committee on House Administration—on the right of a Member to his seat, enrolled bills, on all matters referred to it of printing for the use of the House or the two Houses, and on all matters of expenditure of the contingent fund of the House; the Committee on Ways and Means—on bills raising revenue; the Committee on Appropriations—on the general appropriation bills; the Committee on Public Works—on bills authorizing the improvement of rivers and harbors; the Com-

mittee on the Public Lands—on bills for the forfeiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, bills for the reservation of the public lands for the benefit of actual and bonafide settlers, and bills for the admission of new States; the Committee on Veterans Affairs—on general pension bills.

"(b) It shall always be in order to call up for consideration a report from the Committee on Rules (except it shall not be called up for consideration on the same day it is presented to the House, unless so determined by a vote of not less than two-thirds of the Members voting, but this provision shall not apply during the last three days of the session), and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of. The Committee on Rules shall not report any rule or order which shall provide that business under paragraph 7 of Rule XXIV shall be set aside by a vote of less than two-thirds of the Members present; nor shall it report any rule or order which shall operate to prevent the motion to recommit being made as provided in paragraph 4 of rule XVI.

"(c) The Committee on Rules shall present to the House reports concerning rules, joint rules, and order of business, within three legislative days of the time when ordered reported by the committee. If such rule or order is not considered immediately, it shall be referred to the calendar and, if not called up by the Member making the report within seven legislative days thereafter, any member of the Rules Committee may call it up as a question of privilege and the Speaker shall recognize any member of the Rules Committee seeking recognition for that pur-

pose. If the Committee on Rules shall make an adverse report on any resolution pending before the committee, providing for an order of business for the consideration by the House of any public bill or joint resolution, on days when it shall be in order to call up motions to discharge committees it shall be in order for any Member of the House to call up for consideration by the House any such adverse report, and it shall be in order to move the adoption by the House of said resolution adversely reported notwithstanding the adverse report of the Committee on Rules, and the Speaker shall recognize the Member seeking recognition for that purpose as a question of the highest privilege.

"(d) The Committee on House Administration shall make final report to the House in all contested-election cases not later than six months from the first day of the first regular session of the Congress to which the contestee is elected except in a contest from the Territory of Alaska, in which case the time shall not exceed nine months.

"(e) A standing committee of the House (other than the Committee on Appropriations) shall meet to consider any bill or resolution pending before it (A) on all regular meeting days selected by the committee; (B) upon the call of the chairman of the committee; (C) if the chairman of the committee, after three days' consideration, refuses or fails, upon the request of at least three members of the committee, to call a special meeting of the committee within seven calendar days from the date of said request, then, upon the filing with the clerk of the committee of the written and signed request of a majority of the committee for a called special meeting of the committee, the committee shall meet on the day and hour specified in said written request. It shall be the duty of the clerk of the committee to notify all members of the committee in the usual way of such called special meeting.

"(f) The rules of the House are hereby made the rules of its standing committees so far as applicable, except that a motion to recess from day to day is hereby made a motion of high privilege in said committees."

DELEGATES AND RESIDENT COMMISSIONER

Sec. 122. Rule XII of the Standing Rules of the House of Representatives is amended to read as follows:

"RULE XII

"DELEGATES AND RESIDENT COMMISSIONER

"1. The Delegates from Hawaii and Alaska, and the Resident Commissioner to the United States from Puerto Rico, shall be elected to serve as additional members on the Committees on Agriculture, Armed Services, and Public Lands; and they shall possess in such committees the same powers and privileges as in the House, and may make any motion except to reconsider."

REFERENCE OF PRIVATE CLAIM BILLS

Sec. 123. Paragraph 3 of rule XXI of the Standing Rules of the House of Representatives is amended to read as follows:

"3. No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following committees, namely: To the Committee on Foreign Affairs and to the Committee on the Judiciary."

PART 3—PROVISIONS APPLICABLE TO BOTH HOUSES

PRIVATE BILLS BANNED

Sec. 131. No private bill or resolution (including so-called omnibus claims or pension bills), and no amend-

ment to any bill or resolution, authorizing or directing (1) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Federal Tort Claims Act, or for a pension (other than to carry out a provision of law or treaty stipulation); (2) the construction of a bridge across a navigable stream; or (3) the correction of a military or naval record, shall be received or considered in either the Senate or the House of Representatives.

CONGRESSIONAL ADJOURNMENT

Sec. 132. Except in time of war or during a national emergency proclaimed by the President, the two Houses shall adjourn sine die not later than the last day (Sundays excepted) in the month of July in each year unless otherwise provided by the Congress.

COMMITTEE PROCEDURE

Sec. 133. (a) Each standing committee of the Senate and the House of Representatives (except the Committees on Appropriations) shall fix regular weekly, biweekly, or monthly meeting days for the transaction of business before the committee, and additional meetings may be called by the chairman as he may deem necessary.

(b) Each such committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

(c) It shall be the duty of the chairman of each such committee to report or cause to be reported promptly to the Senate or House of Representatives, as the case may be, any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

(d) No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present.

(e) Each such standing committee shall, so far as practicable, require all witnesses appearing before it to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

(f) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

COMMITTEE POWERS

Sec. 134 (a) Each standing committee of the Senate, including any subcommittee of any such committee, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents to take such testimony and to make such expenditures (not in excess of $10,000 for each committee during any Congress) as it deems advisable. Each such committee may make investigations into any matter within its jurisdiction, may report such hearings as may be had by it, and may employ stenographic assistance at a cost not exceeding 25 cents per hundred words. The expenses of the committee shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

(b) Every committee and subcommittee serving the Senate and House of Representatives shall report the name, profession and total salary of each staff member employed by it, and shall make an accounting of funds appropriated to it and expended by it to the Secretary of the Senate and Clerk of the House of Representatives, as the case may be, at least once every six months, and such information shall be published periodically in the Congressional Directory when and as the same is issued and as Senate and House documents, respectively, every three months.

(c) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session.

CONFERENCE RULES ON AMENDMENTS IN NATURE OF SUBSTITUTION

Sec. 135. (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of subjects in disagreement.

(b) In any case in which the conferees violate subsection (a), the conference report shall be subject to a point of order.

LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES

Sec. 136. To assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary,

each standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

DECISIONS ON QUESTIONS OF COMMITTEE JURISDICTION

Sec. 137. In any case in which a controversy arises as to the jurisdiction of any standing committee of the Senate with respect to any proposed legislation, the question of jurisdiction shall be decided by the presiding officer of the Senate, without debate, in favor of that committee which has jurisdiction over the subject matter which predominates in such proposed legislation; but such decision shall be subject to an appeal.

LEGISLATIVE BUDGET

Sec. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated overall Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for de-

ficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated expenditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being $."

HEARINGS AND REPORTS BY APPROPRIATIONS COMMITTEES

Sec. 139. (a) No general appropriation bill shall be considered in either House unless, prior to the consideration of such bill, printed committee hearings and reports on such bill have been available for at least three calendar days for the Members of the House in which such bill is to be considered.

(b) The Committees on Appropriations of the two Houses are authorized and directed, acting jointly, to develop a standard appropriation classification schedule which will clearly define in concise and uniform accounts the subtotals of appropriations asked for by agencies in the executive branch of the Government. That part of the printed hearings containing each such agency's request for appropriations shall be preceded by such a schedule.

(c) No general appropriation bill or amendment thereto shall be received or considered in either House if it

contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.

(d) The Appropriations Committees of both Houses are authorized and directed to make a study of (1) existing permanent appropriations with a view to limiting the number of permanent appropriations and to recommend to their respective Houses what permanent appropriations, if any, should be discontinued and; (2) the disposition of funds resulting from the sale of Government property or services by all departments and agencies in the executive branch of the Government with a view to recommending to their respective Houses a uniform system of control with respect to such funds.

RECORDS OF CONGRESS

Sec. 140. (a) The Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed, acting jointly, to obtain at the close of each Congress all of the noncurrent records of the Congress and of each committee thereof and transfer them to the National Archives for preservation, subject to the orders of the Senate or the House, respectively.

(b) The Clerk of the House of Representatives is authorized and directed to collect all of the noncurrent records of the House of Representatives from the First to the Seventy-sixth Congress, inclusive, and transfer such records to the National Archives for preservation, subject to the orders of the Senate or the House, respectively.

PRESERVATION OF COMMITTEE HEARINGS

Sec. 141. The Librarian of the Library of Congress is authorized and directed to have bound at the end of each session of Congress the printed hearings of testimony taken by each committee of the Congress at the preceding session.

EFFECTIVE DATE

Sec. 142. This title shall take effect on January 2, 1947; except that this section and sections 140 and 141 shall take effect on the date of enactment of this Act.

TITLE II—MISCELLANEOUS

PART 1—Statutory Provisions Relating to Congressional Personnel

INCREASE IN COMPENSATION FOR CERTAIN CONGRESSIONAL OFFICERS

Sec. 201. (a) Effective January 1, 1947, the annual basic compensation of the elected officers of the Senate and the House of Representatives (not including the Presiding Officers of the Two Houses) shall be increased by 50 per centum; and the provisions of section 501 of the Federal Employees Pay Act of 1945, as amended by section 5 of the Federal Employees Pay Act of 1946, shall not be applicable to the compensation of said elected officers.

(b) There is hereby authorized to be appropriated annually for the "Office of the Vice President" the sum of $23,130; and there is hereby authorized to be appropriated annually for the "Office of the Speaker" the sum of $20,025.

(c) The Speaker, the majority leader, and the minority leader of the House of Representatives are each authorized to employ an administrative assistant, who shall receive basic compensation at a rate not to exced $8,000 a year.

There is hereby authorized to be appropriated such sums as may be necessary for the payment of such compensation.

COMMITTEE STAFFS

Sec. 202. (a) Each standing committee of the Senate and the House of Representatives (other than the Appropriations Committees) is authorized to appoint by a majority vote of the committee not more than four professional staff members in addition to the clerical staffs on a permanent basis without regard to political affiliations and solely on the basis of fitness to perform the duties of the office; and said staff members shall be assigned to the chairman and ranking minority member of such committee as the committee may deem advisable. Each such committee is further authorized to terminate the services by a majority vote of the committee of any such professional staff member as it may see fit. Professional staff members shall not engage in any work other than committee business and no other duties may be assigned to them.

(b) Subject to appropriations which it shall be in order to include in appropriation bills, the Committee on Appropriations of each House is authorized to appoint such staff, in addition to the clerk thereof and assistants for the minority, as each such committee, by a majority vote, shall determine to be necessary, such personnel, other than the minority assistants, to possess such qualifications as the committees respectively may prescribe, and the Committee on Appropriations of the House also is authorized to conduct studies and examinations of the organization and operation of any executive agency (including any agency the majority of the stock of which is owned by the Government of the United States) as it may deem necessary to assist it in connection with the determination of matters

within its jurisdiction and in accordance with procedures authorized by the committee by a majority vote, including the rights and powers conferred by House Resolution Numbered 50, adopted January 9, 1945.

(c) The clerical staff of each standing committee, which shall be appointed by a majority vote of the committee, shall consist of not more than six clerks, to be attached to the office of the chairman, to the ranking minority member, and to the professional staff, as the committee may deem advisable; and the position of committee janitor is hereby abolished. The clerical staff shall handle committee correspondence and stenographic work, both for the committee staff and for the chairman and ranking minority member on matters related to committee work.

(d) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the Congress and all members of the committee and the respective Houses shall have access to such records. Each committee is authorized to have printed and bound such testimony and other data presented at hearings held by the committee.

(e) The professional staff members of the standing committees shall receive annual compensation, to be fixed by the chairman, ranging from $5,000 to $8,000 and the clerical staff shall receive annual compensation ranging from $2,000 to $8,000.

(f) No committee shall appoint to its staff any experts or other personnel detailed or assigned from any department or agency of the Government, except with the written permission of the Committee on Rules and Ad-

ministration of the Senate or the Committee on House Administration of the House of Representatives, as the case may be.

(g) No individual who is employed as a professional staff member of any committee as provided in this section shall be eligible for appointment to any office or position in the executive branch of the Government for a period of one year after he shall have ceased to be such a member.

(h) Notwithstanding the foregoing provisions—

(1) The committee employees of the existing Committee on Appropriations of the Senate and of the existing committee on appropriations of the House of Representatives shall be continued on the rolls of the respective appropriations committees established under title I of this Act during the fiscal year 1947, unless sooner removed for cause.

(2) Committee employees of all other existing standing committees of each House shall be continued on the pay rolls of the Senate and House of Representatives, respectively, through January 31, 1947, unless sooner removed for cause by the Secretary of the Senate or the Clerk of the House, as the case may be.

(3) The appropriations for the compensation of committee employees of standing committees of the Senate and of the House of Representatives contained in the Legislative Branch Appropriation Act, 1947, shall be available for the compensation of employees specified in paragraph (2) of this subsection and of employees of the standing committees of the Senate and House of Representatives succeeding to the jurisdiction of the standing committees specified in such Appropriation Act; and in any case in which the legislative jurisdiction of any existing standing

committee is transferred to two or more standing committees under title I of this Act, the Committee on Rules and Administration of the Senate with respect to standing committees of the Senate, and the Committee on House Administration, with respect to standing committees of the House, shall allocate such appropriations in an equitable manner.

LEGISLATIVE REFERENCE SERVICE

Sec. 203. (a) The Librarian of Congress is authorized and directed to establish in the Library of Congress a separate department to be known as the Legislative Reference Service. It shall be the duty of the Legislative Reference Service—

(1) upon request, to advise and assist any committee of either House or any joint committee in the analysis, appraisal, and evaluation of legislative proposals pending before it, or of recommendations submitted to Congress, by the President or any executive agency, and otherwise to assist in furnishing a basis for the proper determination of measures before the committee;

(2) upon request, or upon its own initiative in anticipation of requests, to gather, classify, analyze, and make available, in translations, indexes, digests, compilations and bulletins, and otherwise, data for a bearing upon legislation, and to render such data serviceable to Congress, and committees and Members thereof, without partisan bias in selection or presentation;

(3) to prepare summaries and digests of public hearings before committees of the Congress, and of bills and resolutions of a public general nature introduced in either House.

(b) (1) A director and assistant director of the Legislative Reference Service and all other necessary personnel, shall be appointed by the Librarian of Congress without regard to the civil-service laws and without reference to political affiliations, solely on the ground of fitness to perform the duties of their office. The compensation of all employees shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended: *Provided,* That the grade of senior specialists in each field enumerated in paragraph (2) of this subsection shall not be less than the highest grade in the executive branch of the Government to which research analysts and consultants without supervisory responsibility are currently assigned. All employees of the Legislative Reference Service shall be subect to the provisions of the civil-service retirement laws.

(2) The Librarian of Congress is further authorized to appoint in the Legislative Reference Service senior specialists in the following broad fields: Agriculture; American government and public administration; American public law; conservation; education; engineering and public works; full employment; housing; industrial organization and corporation finance; international affairs; international trade and economic geography; labor; mineral economics; money and banking; price economics; social welfare; taxation and fiscal policy; transportation and communications; and veterans' affairs. Such specialists, together with such other members of the staff as may be necessary, shall be available for special work with the appropriate committees of Congress for any of the purposes set out in section 203 (a) (1).

(c) There is hereby authorized to be appropriated for the work of the Legislative Reference Service the following sums: (1) For the fiscal year ending June 30, 1947,

$550,000; (2) for the fiscal year ending June 30, 1948, $650,000; (3) for the fiscal year ending June 30, 1949, $750,000; and (4) for each fiscal year thereafter such sums as may be necessary to carry on the work of the Service.

OFFICE OF THE LEGISLATIVE COUNSEL

Sec. 204. There is hereby authorized to be appropriated for the work of the Office of the Legislative Counsel the following sums:

(1) For the fiscal year ending June 30, 1947, $150,000;

(2) For the fiscal year ending June 30, 1948, $200,000;

(3) For the fiscal year ending June 30, 1949, $250,000;

(4) For the fiscal year ending June 30, 1950, $250,000; and

(5) For each fiscal year thereafter such sums as may be necessary to carry on the work of the Office.

STUDIES BY COMPTROLLER GENERAL

Sec. 205. The Comptroller General is authorized and directed to make a full and complete study of restrictions placed in general appropriation Acts limiting the expenditure of specified appropriations therein, with a view to determining the cost to the Government incident to complying with such restrictions, and to report to the Congress his estimate of the cost of complying with such restrictions and such other recommendations with respect thereto as he deems necessary or desireable.

EXPENDITURE ANALYSES BY COMPTROLLER GENERAL

Sec. 206. The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations), which, in the opinion of the Comp-

troller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Expenditures in the Executive Departments, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses.

CORRECTION OF MILITARY AND NAVAL RECORDS

Sec. 207. The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury with respect to the Coast Guard, respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or to remove an injustice.

PART 2—STATUTORY PROVISIONS RELATING TO COMMITTEES OF CONGRESS

IMPROVEMENT OF CONGRESSIONAL RECORD

Sec. 221. The Joint Committee on Printing is authorized and directed to provide for printing in the Daily Record the legislative program for the day, together with a list of congressional committee meetings and hearings, and the place of meeting and subject matter; and to cause a brief resumé of congressional activities for the previous day to be incorporated in the Record, together with an index of its contents. Such data shall be prepared under the supervision of the Secretary of the Senate and the Clerk of the House of Representatives, respectively.

JOINT COMMITTEE ON PRINTING

Sec. 222. Section 1 of the Act entitled "An Act Providing for the public printing and binding and the distribution of public documents", approved January 12, 1895 (28 Stat. 601), is amended to read as follows: "That there shall be a Joint Committee on Printing, consisting of the chairman and two members of the Committee on Rules and Administration of the Senate and the chairman and two members of the Committee on House Administration of the House of Representatives, who shall have the powers hereinafter stated."

JOINT COMMITTEE ON THE LIBRARY

Sec. 223. The Joint Committee of Congress on the Library shall hereafter consist of the chairman and four members of the Committee on Rules and Administration of the Senate and the chairman and four members of the Committee on House Administration of the House of Representatives.

TRANSFER OF FUNCTIONS

Sec. 224. The functions, powers, and duties imposed by statute, resolution, or rule of either House of Congress on the effective date of this section on a standing committee of the Senate or the House of Representatives (or the chairman thereof) are, insofar as they are consistent with this Act, hereby transferred to that standing committee created by this Act (or the chairman thereof) to which is transferred the legislative jurisdiction over the subject matter to which such functions, powers, and duties relate; except that the chairman of the Committee on Civil Service of the Senate and the chairman of the Committee on Post Office and Civil Service of the House created by this Act shall be members of the National Archives council.

JOINT COMMITTEE ON THE ECONOMIC REPORT

Sec. 225. Section 5 (b) (3) (relating to the time for filing the report of the Joint Committee on the Economic Report) of the Employment Act of 1946 is amended by striking out "May 1" and inserting in lieu thereof "February 1".

ECONOMIC REPORT OF THE PRESIDENT

Sec. 226. Section 3(a) (relating to the time for filing the economic report of the president) of the Employment Act of 1946 is amended by striking out "within 60 days after the beginning of each regular session" and inserting in lieu thereof "at the beginning of each regular session".

PART 3—PROVISIONS RELATING TO CAPITOL AND PAGES

REMODELING OF CAUCUS ROOMS AND RESTAURANTS

Sec. 241. The Architect of the Capitol is authorized and directed to prepare plans and submit them to Congress at the earliest practicable date for the remodeling (a) of the caucus rooms in the Senate and House Office Buildings to provide improved acoustics and seating facilities and for the presentation of motion picture or other visual displays on matters of national interest; and (b) of the Senate and House Restaurants to provide for more convenient dining facilities.

ASSIGNMENT OF CAPITOL SPACE

Sec. 242. The President pro tempore of the Senate and the Speaker of the House of Representatives shall cause a survey to be made of available space within the Capitol which could be utilized for joint committee meetings, meetings of conference committees, and other meetings, requiring the attendance of both Senators and Members of the House of Representatives; and shall recommend the reassignment of such space to accommodate such meetings.

SENATE AND HOUSE PAGES

Sec. 243. (a) The Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, are authorized and directed to enter into an arrangement with the Board of Education of the District of Columbia for the education of Congressional pages and pages of the Supreme Court in the public school system of the District. Such arrangement shall include provision for reimbursement to the District of Columbia for any additional expenses incurred by the public school system of the District in carrying out such arrangement.

(b) There are hereby authorized to be appropriated such sums as may be necessary to reimburse the District of Columbia in accordance with the arrangement referred to in subsection (a).

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, said page or pages may elect to attend a private or parochial school of their own choice: *Provided, however,* That such private or parochial school shall be reimbursed by the Senate and House of Representatives only in the same amount as would be paid if the page or pages were attending a public school under the provisions of paragraphs (a) and (b) of this section.

AUTHORIZATION OF APPROPRIATIONS AND PERSONNEL

Sec. 244. All necessary funds required to carry out the provisions of this Act, by the Secretary of the Senate and the Clerk of the House, are hereby authorized to be appropriated, and the Secretary of the Senate and the Clerk of the House are hereby further authorized to employ such administrative assistants as may be necessary in order to carry out the provisions of this Act under their respective jurisdictions.

EFFECTIVE DATE

Sec. 245. This title shall take effect on the date of its enactment; except that sections 202 (a), (b), (c), (e), (f), and (h), 222, 223, 224, and 243 shall take effect on the day on which the Eightieth Congress convenes.

REME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 1 1968
AVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 478

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,

Plaintiffs-Appellants,

—and—

MILTON M. COHEN,

Intervening Plaintiff-Appellant,

—v.—

HON. EDWIN E. WILLIS, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of Amicus

The American Civil Liberties Union appears with the consent of the parties. The Union is a non-partisan organization devoted entirely to the protection and advancement of constitutional rights. It adheres firmly to the conception that democratic processes cannot function without

the free and full exercise of those rights. It has no other program. In this sense ACLU is counsel for principle.

Questions Presented[1]

(1) Whether the acts of the House Un-American Activities Committee, which appellants allege in their complaint, constitute an unconstitutional application of Rule XI

(2) Assuming the allegations of the complaint are proved, whether declaratory and injunctive relief are appropriate—

(a) as to Committee member defendants;

(b) as to the non-Committee defendants, whose duties include implementing Committee power through contempt prosecutions.

Statement of the Case

In their complaint below, appellants claim in substance that they can prove that Rule XI[2] as applied by the House Un-American Activities Committee is unconstitutional; that such conduct is manifested, for example, by the use of hearings, and news leaks before hearings, to expose witnesses (including appellants) to public scorn for exposure's sake; by asking questions of unfriendly witnesses to which it already knows the answers; by forcing witnesses it knows

[1] Appellants' Jurisdictional Statement presents many significant points in addition to those discussed in this brief. In addressing ourselves solely to the procedural point and one substantive issue, we do not mean to depreciate the substantiality of the remaining issues.

[2] Legislative Reorganization Act of 1946, 60 Stat. 812, 828.

to be unfriendly to assert publicly the privilege against self-incrimination; by demeaning witnesses and witnesses' lawyers; by attacking persons and organizations which oppose the Committee or national security agencies; by reviving old allegations against unfriendly witnesses to no apparent purpose; and by persuading employers of unfriendly witnesses to punish them economically for their recalcitrance and for their political views. It is claimed further that all of this neither has nor can have any legitimate legislative purpose.

The Questions Are Substantial

I.

The claimed actions of the Committee raise the substantial question whether Rule XI is constitutional as applied.

There is no question but that the actions which appellants claim are characteristic of the Committee's efforts represent arbitrary, unreasonable and unconstitutional applications of the otherwise legitimate legislative power to investigate. It is settled that an otherwise valid statute may be nullified by such application. *Fiske* v. *Kansas,* 274 U. S. 380, 385, 387 (1927); *Gibson* v. *Florida Legislative Comm.,* 372 U. S. 539, 566 (1963) (Douglas, *J.,* concurring). It follows, *a fortiori,* that a Rule of the House of Representatives so applied does not meet constitutional standards. What the Congress cannot do by statute, one of its Houses cannot do by Rule. Compare *Kilbourn* v. *Thompson,* 103 U. S. 168, 182 (1880).

Barenblatt v. *United States,* 360 U. S. 109 (1959), does not impair this conclusion. Indeed, it lends it support, for *Barenblatt,* while upholding Rule XI against claimed unconstitutional vagueness on the facts of *that* case, specifically noted that "there is no indication in this record that the subcommittee was attempting to pillory witnesses." 360 U. S. at 134. Thus the Seventh Circuit, in *Stamler* v. *Willis,* 371 F. 2d 413 (1966), noted that the complaints in the present case alleged just such "pillorying" of the appellants and others under Rule XI as "continually interpreted by the Sub-committee. . . . " (App. 25, Jurisdictional Statement). Likewise, the Court pointed out in *Gojack* v. *United States,* 384 U. S. 702, 706 (1966) that:

> "In the circumstances of that case [Barenblatt], the Court sustained the constitutionality of the investigation. . . . "

Accordingly, if appellants can prove the facts they allege, no legitimate legislative activity[3] is involved, the Speech and Debate Clause (U. S. Constitution, Article I, §6, Cl. 1) does not immunize the conduct alleged, and the question of remedy is relevant.

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[3] Compare *Tenney* v. *Brandhove,* 341 U. S. 367, 376, 377 (1951) and *Kilbourn* v. *Thompson, supra,* at 204-205.

II.

Declaratory judgment and injunctive relief are appropriate remedies.

a. *As to the Actions of the Committee Members*

Dombrowski v. *Pfister*, 380 U. S. 479 (1965), concluded that irreparable injury justified injunctive relief to prevent criminal prosecutions resulting from legislative excesses where the defense of the criminal cases would not adequately vindicate constitutional rights and where a substantial loss of freedom of expression would occur pending ultimate review of adverse decisions. *Dombrowski* v. *Pfister*, 380 U. S. at 485-486. The relevance of that holding is strengthened by the fact that *Dombrowski* was concerned with potential prosecutions while the case at bar involves both (1) present and long continuing harm to individuals through Committee action and (2) pending contempt proceedings for resistance to such action. Under such special circumstances the irreparable injury is the more apparent because of the immediacy of harm to be implied from the facts which appellants offer to prove, and from the pendency of contempt actions. See *Dombrowski* v. *Pfister*, 380 U. S. at 486.

In the present case the facts alleged remove the Committee defendants from the protection of the Speech and Debate Clause. Moreover, the special circumstances present in the harassment and pursuit of witnesses quicken the remedies sought (i.e., declaratory judgment and injunctive relief) as to them.

In connection with standing to sue for injunctive and declaratory relief in *Dombrowski* this Court said:

"Because of the sensitive nature of constitutionally protected expression, we have not required that all of those subject to overbroad regulations risk prosecution to test their rights. For free expression—of transcendent value to all society, and not merely to those exercising their rights—might be the loser." 380 U. S. at 486.

The effect of *Dombrowski* is to authorize injunctive relief against anticipated prosecution where First Amendment activity is adversely affected and protection cannot be secured piecemeal in criminal prosecutions.

In *Bond* v. *Floyd,* 385 U. S. 116, 128-137 (1966), this Court upheld injunctive relief against a majority of the members of the Georgia legislature in face of a claim that the provisions of the Georgia Constitution giving each House the right to judge the qualification of its members barred the action. Free speech considerations overbalanced the local legislative concern for untrammeled legislative action. There is no distinction in principle between *Dombrowski* and *Bond,* and the case at bar which justifies a denial of the same relief here should the appellants make their actual case.

These appellants are already being penalized by the obloquy of exposure, adverse innuendo and harassment,

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[4] The defendants were the Governor, police and law enforcement officers, and the Chairman of the Legislative Joint Committee on Un-American Activities in Louisiana. 380 U. S. at 482. The Court directed the prompt framing of a decree restraining prosecution, ordering immediate return of seized papers, and prohibiting further acts of enforcement of void sections. More precise terms and the identity of persons to be enjoined were left to the District Court after hearing on remand. 380 U. S. at 497-498. Apparently the speech and debate issue was not raised.

and by pending contempt proceedings. The circumstances pose immediate penalties for and threats to the exercise of First Amendment rights that go beyond the chilling effects in *Dombrowski*. For these reasons there is an inadequate remedy at law and the remedy sought is appropriate.

b. *The Non-Committee Defendants*

Without relinquishing the conclusion that declaratory judgment and injunctive relief against the Committee defendants find support in both *Dombrowski* and *Bond*, the appellants need not rest their whole remedial hope upon keeping the Committee defendants in the lawsuit. The majority below immunized the non-Committee defendants by too simple an expedient. The majority simply held that the relief sought against the prosecutor-defendants—the Attorney General and the United States Attorney—were "ancillary" to the claims against the Congressional defendants. Dismissal followed without further explanation. Should this view prevail, it is difficult to imagine any circumstances under which the conduct of admittedly unconstitutional legislative action could be curtailed—however much that conduct impaired vital rights of individuals—without submission to the hazards of a criminal proceeding.

The majority below ignored the compelling precedents in this Court for inhibiting by injunction the ancillaries of Congressional defendants even when speech and debate considerations shielded the legislators. Long ago in *Kilbourn* v. *Thompson, supra,* where, although the legislators were *not* found to have engaged in conduct "of an extraordinary character" lifting the speech and debate immunity, liability for false imprisonment was posited, if proved, upon

the Sergeant-at-Arms of the House. Much more recently the point was reaffirmed in *Dombrowski* v. *Eastland*, 387 U. S. 82, 84-85 (1967), where it was held that counsel for a United States Senate Subcommittee could be required to defend a tort action growing out of Subcommittee activity even though a member of the Senate could not.

Accordingly, it is clear that ancillaries may be held liable even when Congressional principals are shielded by the Speech and Debate Clause.

CONCLUSION

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

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September 1968

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NOS. 478 and 479

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In the Supreme Court of the United States

OCTOBER TERM, 1968

JEREMIAH STAMLER, M.D. and YOLANDA F. HALL,
Plaintiffs-Appellants,

vs.

HON. EDWIN E. WILLIS, et al.,
Defendants-Appellees,

MILTON M. COHEN,
Plaintiff-Appellant,

vs.

HON. EDWIN E. WILLIS, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

Petition for Rehearing

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Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

Petition for Rehearing

Plaintiffs-appellants petition this Court to grant a rehearing of this case, and upon the rehearing to vacate the order entered on November 25, 1968, and thereafter grant appellants the relief prayed in appellants' Jurisdictional Statement.

In 1946, members of both the House and Senate debated at length as to whether the charters of standing committees should be contained only in resolutions of each house, or whether the charters should also be embodied in a statute. (92 Cong. Rec. 6391-94, 6457, 10040, 10064 (1946).) No serious doubt was ever cast on the use of the statutory form, which was adopted to assure parallel organization of the houses of future congresses. The result was Part 2 of Title I of the Legislative Re-Organization Act of 1946, which includes Rule XI establishing the House of Representatives Committee on Un-American Activities.

These congressional debates demonstrate beyond doubt that Congress knowingly and purposefully embodied in statutory form the charters which establish standing committees. Accordingly, an "Act of Congress" is involved in this case within 28 U.S.C. § 2282.

Respectfully submitted,

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December 17, 1968.

Thomas P. Sullivan, attorney of record for appellants Jeremiah Stamler, M.D. and Yolanda F. Hall, and Richard Orlikoff, attorney of record for Milton M. Cohen, certify that the foregoing Petition for Rehearing is presented in good faith and not for purposes of delay.

Three copies of this Petition for Rehearing have been served upon the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, and three copies have been served upon the United States Attorney for the Northern District of Illinois.

.....

THOMAS P. SULLIVAN

.....

RICHARD ORLIKOFF

Signed and sworn to before
me December 17, 1968.

.....

Notary Public

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

STAMLER ET AL *v.* WILLIS ET AL.; and
COHEN *v.* WILLIS ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

Nos. 478 and 479. Decided November 25, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed.

MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE HARLAN are of the opinion that further consideration of the question of jurisdiction should be postponed to the hearing of the cases on the merits and that the cases be set for oral argument.

MR. JUSTICE MARSHALL took no part in the consideration or decision of these cases.